

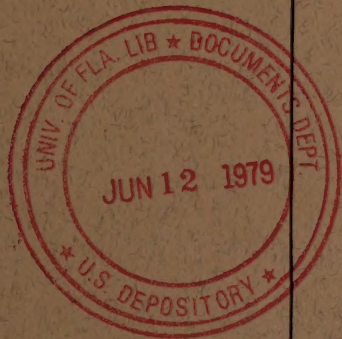
NORTHERN IRELAND: A ROLE FOR THE
UNITED STATES?

REPORT
BY TWO MEMBERS OF THE
COMMITTEE ON THE JUDICIARY
NINETY-FIFTH CONGRESS
SECOND SESSION

BASED ON A
FACTFINDING TRIP TO
NORTHERN IRELAND, THE IRISH REPUBLIC,
AND ENGLAND
AUGUST/SEPTEMBER, 1978



DECEMBER 1978



Printed for the use of the Committee on the Judiciary

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WASHINGTON : 1979

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LETTER OF TRANSMITTAL

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP
AND INTERNATIONAL LAW OF THE
COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Washington, D.C.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to the instructions contained in your letter of August 14, 1978, we travelled to London, Northern Ireland, and Dublin between August 23, 1978 and September 1, 1978.

As Chairman and Ranking Member of the Subcommittee on Immigration, Citizenship and International Law, our primary concern was to investigate the policy and procedures employed by our Consuls in those countries in issuing immigrant and non-immigrant visas to certain Irish nationals in the Republic of Ireland and the six counties of Northern Ireland.

We immediately found that the scope of our basic inquiry would have to be broadened. Examining the background information of those persons who were denied or even issued visas, we quickly learned that it was necessary to seek up-to-date evaluations on social, political, and economic conditions, especially in Northern Ireland, which had a direct impact on visa decisions.

Also, media reports of our arrival prompted numerous persons to undertake to see us, each to tell his story. We also had decided prior to our departure that we would keep our visits to official personalities to a minimum, knowing that over the years Congressional delegations have had ample opportunity to discuss official British governmental policies and actions towards Northern Ireland.

It is our intention to set out in this report transmitted to you, excerpts of verbatim transcripts of our meetings and conversations with individuals and groups. Most of the persons with whom we talked were kind enough to permit us to tape our meetings with them. As a result, we came away with some sixteen hours of tapes which will make up the substantive portion of our report.

Since most of these interviews touched on various subjects, our report is submitted on a chronological basis as closely as possible, without seeking to isolate viewpoints on specific subjects contained in each meeting.

We will attempt to include background information wherever necessary to facilitate a better understanding where references in the conversation are made to events, legislation, personalities, conditions, reports, etc.

We will also endeavor to report briefly those conversations which we were not permitted to record.

We wish to make it clear that any viewpoints expressed in this report are strictly ours, and do not necessarily represent the views of the Subcommittee or any of its individual Members.

We also wish to acknowledge the assistance provided us by our "unofficial adviser", Mr. Fred Burns-O'Brien of the National Irish Caucus, as well as the two staff members who accompanied us on the trip, Garner J. Cline, Staff Director of the full Committee and Peter Regis, Legislative Assistant of the Subcommittee.

Sincerely,

JOSHUA EILBERG,
HAMILTON FISH, Jr.

AUGUST 14, 1978.

HON. JOSHUA EILBERG,

Chairman, Subcommittee on Immigration, Citizenship, and International Law, Committee on the Judiciary, Washington, D.C.

DEAR JOSH: Respected members of the Irish-American community have indicated that U.S. consular officers at posts in London, Belfast, and Dublin have recently been more reluctant to issue nonimmigrant visas to certain British subjects of Irish descent desirous of visiting the United States. Furthermore, allegations have been made that denials of visas have been based upon unsubstantiated information.

I believe that the interests of the Committee on the Judiciary would be well served if you and the Ranking Minority Member, the Honorable Hamilton Fish, Jr., would interview U.S. consular officials in Belfast, Northern Ireland; Dublin, Republic of Ireland; and London, England, in an effort to determine whether their decisions are arbitrary.

It falls within the jurisdiction of the Subcommittee on Immigration, Citizenship, and International Law to exercise close oversight with regard to the administration of the Immigration and Nationality Act, as well as to insure that there is uniformity of decision-making in the issuance or denial of nonimmigrant visas.

I trust that you and Mr. Fish will be able to look into this matter at your earliest convenience and I would appreciate being advised of your decision as soon as possible.

With warm personal regards,

Sincerely,

PETER W. RODINO, Jr.,

Chairman.

AUGUST 14, 1978.

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House of Representatives

Washington, D.C.

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FOREWORD

We were totally unprepared for what we saw and learned during our four days and five evenings in Northern Ireland, this, in spite of our having read about and been thoroughly briefed on the situation prior to our departure on this trip. One cannot grasp the full import of the gravity of the situation until one sees it with his own eyes.

We were especially struck by the violation of human rights to which the people of Northern Ireland are subjected to day in and day out.

It would be presumptuous on our part even to suggest we have a solution to the problems of the six counties of Northern Ireland in a conflict which has been going on for some eight and one-half centuries. We do, however, wish to share the information we gathered during our visit. Perhaps we can generate within government and public circles a sort of rethinking about whether there is a positive role the United States can play in resolving this centuries' old impasse.

Our main observations and impressions are summarized in those portions of our report relating to the press conference we held in Belfast upon our departure and the conclusions.

However, we do feel that the meetings we had with political groups, clergy, government officials, and citizens of Northern Ireland reflect that there is a thread of a possible compromise among the opposing factions which could eventually lead to progress in devising a solution acceptable to all parties concerned.

It is our hope that this report will serve as a basis, as well as an incentive to many others to pursue the humanitarian objective of resolving the Irish question.

Since the tape recordings were made under impromptu circumstances, certain editing was necessary in the transcripts. However, the editing was confined only to make the language more readable. Every attempt has been made to maintain the accuracy of the contents, expressions, and opinions of the persons interviewed.

JOSHUA EILBERG,
HAMILTON FISH, Jr.

ITINERARY AND ACTIVITIES OF THE STUDY MISSION

Monday, August 28, 1978

1. Meeting at the United States Embassy in London with Norman Redden, Counselor for Consular Affairs, U.S. Embassy, London, and Charles R. Stout, Consul General, Belfast.

2. Travel to Belfast.

3. Meeting at the Europa Hotel, Belfast, with Brendan Gallagher, father of Willie Gallagher, prisoner at Long Kesh on a hunger strike.

4. Meeting with Relatives Action Committee for Long Kesh; Clara Reilly, Catherine Holden, Annie Adams, Maura McCrory, Margaret Clarke, Kathleen Greene, Lily Fitzsimmons, Mary Armstrong.

5. Following the Gallagher interview, telegrams were sent to Prime Minister Callaghan, Home Secretary Mervyn Rees, Secretary of State for North Ireland Affairs Roy Mason, Minister of State for North Ireland Don Concannon calling attention to the precarious state of health of the prisoner Willie Gallagher and offering to act as guarantors to Willie against any possible reprisals for his having been on a hunger strike. The telegram also urged British authorities to give consideration to a retrial.

The text of the telegram was transmitted to Ms. Pat Derian, Assistant Secretary for Human Rights and Humanitarian Affairs, Department of State the same evening through the office of the Subcommittee.

Tuesday, August 29, 1978

1. Visit to the U.S. Consulate in Belfast to review the files of non-immigrant visa applicants who were denied visas.

2. Meeting at the Europa Hotel, Belfast with representatives of the New Ulster Political Research Group; Glenn Barr, Andy Tyrie, John McMichael, Tommy Lyttle, and Harry Chickem.

3. Visit to Catholic Section of Belfast by Falls Road Taxi Association black cab guided by Clara Reilly and Frank Dimond through Turf Lodge, Ballymurphy, Divis Flats, Casement Park, and Falls Road. Also, visited with senior citizens and pensioners at the Turf Lodge Community Center.

4. Meeting with Official Unionist Party Leaders, Harry West and Rev. Martin Smith, at their party headquarters in Belfast.

5. Visit to Crumlin Road Jail and discussions with prisoners, Frank McCann, nephew of a Philadelphia resident, and Damien Eastwood, a United States citizen from California charged with terrorist activities. Also meeting with Governor Kerr, Prison Warden.

6. Meeting with representatives of the Ulster Independence Association at the Europa Hotel; George Allport, John D. McKeague, Sam McClure, Desmond Wilson, and Alex Reid.

7. Dinner at the residence of the U.S. Consul General Charles Stout. Guests included: David Ford, North Ireland Office Undersecretary for

Political and Information Affairs; Tony Stephens, NIO Under Secretary for Security Affairs; James O'Hara, Chairman of the Northern Ireland Housing Executive; Robin Bailie, General Counsel, De Lorean Motor Company, former Unionist Commerce Minister during Stormont government; W. D. Flackes, BBC, North Ireland political correspondent.

Wednesday, August 30, 1978

1. Meeting with Sir Robert Lowry, Lord Chief Justice of the High Court, Royal Courts of Justice, Belfast.

2. Meeting with the following officials of the North Ireland Office at their offices at Stormont:

Minister of State Don Concannon;

Deputy Secretary James Hannigan;

Under-Secretary David Ford;

Under-Secretary Tony Stephens; and

Prison Service Chief Jack Irvine.

3. Informal lunch at the Europa Hotel with Sean Agnew, defense solicitor for persons accused of terrorist activities, also involved in documenting cases for presentation to European Human Rights Commission

4. Meeting with Sinn Fein representatives of Belfast at the Europa Hotel: Marie Moore, Liann Donnelly and Dottie Boyd.

5. Meeting with Rev. William Arlow, Secretary, Irish Council of Churches at his office in Belfast.

6. Appearance on BBC telecast with William Flackes, North Ireland political correspondent.

7. Meeting with Paddy Devlin, former official of the Social Democratic and Labor Party (SDLP) and now a trade union leader.

8. Congressman Fish met with members of the Association for Legal Justice, Francis Keenan and Patrick Fimicane, at the Europa Hotel.

9. Congressman Eilberg and staff dined at the Glenowen Restaurant in Andersontown where they met with Albert Price, father of the sisters serving life sentences in Armagh Jail: Brendan Kerr, father of Pearse Kerr, Philadelphia resident who had been accused of terrorist activities, but later released after Congressman Eilberg's intervention with British authorities; Patrick Henderson, subject of an immigrant visa denial decision; and Sean Murphy, brother-in-law of the Price sisters incarcerated at Armagh Jail.

10. Congressman Eilberg and staff met with John Turnley and Pat Fahy of the Irish Independence Party at the Europa Hotel.

Thursday, August 31, 1978

1. Visit to Armagh Jail accompanied by Sean Murphy and meeting with Dolours and Marian Price. Later met with Governor Scott, Prison Warden and discussed the Monica Craig case.

2. Meeting with Father Denis Faul at Dunagannon, outspoken and prolific writer on human rights in Northern Ireland.

3. Meeting with Bishop Edward Daly in Derry.

4. Meeting with representatives of the Association of Legal Justice, Sean McCann, Anne Murray and others at the Europa Hotel.

Friday, September 1, 1978

1. Press conference at the Europa Hotel prior to departure for Dublin.

2. Travel to Dublin.

3. Lunch with U.S. Ambassador William Shannon and representatives of the Embassy staff at his residence in Dublin.

4. Meeting with representatives of the Irish Republic Socialist Party, James Daly, Michael Plunkett, and Bridgid Makowski, at the Shelbourne Hotel.

5. Meeting with members of the Provisional Sinn Fein at the Shelbourne Hotel, Ruairi O'Bradaigh, Joe Cahill, John McGuirl, David O'Connell. Most of these persons have either been denied visas or had them revoked.

6. Meeting with Joe Stagg, also a visa denial case.

Monday, September 4, 1978

1. Staff met with Mr. Douwe Korff of Amnesty International at his office in London.

CHAPTER I.—DENIAL OR REVOCATION OF VISAS TO CERTAIN IRISH NATIONALS

As early as 1971, the Department of State has refused or revoked visas to certain Irish nationals from the Republic of Ireland and Northern Ireland under various sections of the Immigration and Nationality Act.

The section most cited in these cases is Sec. 212(a)(28)(F)¹ of the Act which is susceptible to a waiver by the Attorney General upon the recommendation of the Secretary of State.

Other sections of the Act which have been cited as reasons for denial or revocation of visas to Irish applicants are Sec. 212(a)(9); Sec. 212(a)(10); Sec. 212(a)(19) and Sec. 212(a)(27).¹

The following chart reflects the history of the Department of State actions in the various cases since 1971. [chart on page 9]

Although some of the decisions by the Department of State were questioned in the past, it was not until May 24, 1978 when the Department of State again denied a visa to Mr. Ruairi O'Bradaigh, President

¹ Immigration and Nationality Act.

General classes of aliens ineligible to receive visas and excluded from admission; waivers of inadmissibility.

SEC. 212. (a) Except as otherwise provided in this Act, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

(9) Aliens who have been convicted of a crime involving moral turpitude (other than a purely political offense), or aliens who admit having committed such a crime, or aliens who admit committing acts which constitute the essential elements of such a crime; except that aliens who have committed only one such crime while under the age of eighteen years may be granted a visa and admitted if the crime was committed more than five years prior to the date of the application for a visa or other documentation, and more than five years prior to date of application for admission to the United States, unless the crime resulted in confinement in a prison or correctional institution, in which case such alien must have been released from such confinement more than five years prior to the date of the application for a visa or other documentation, and for admission, to the United States. Any alien who would be excludable because of the conviction of a misdemeanor classifiable as a petty offense under the provisions of section 1(3) of title 18, United States Code, by reason of the punishment actually imposed, or who would be excludable as one who admits the commission of an offense that is classifiable as a misdemeanor under the provisions of section 1(2) of title 18, United States Code, by reason of the punishment which might have been imposed upon him, may be granted a visa and admitted to the United States if otherwise admissible: *Provided*, That the alien has committed only one such offense, or admits the commission of acts which constitute the essential elements of only one such offense.

(10) Aliens who have been convicted of two or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement actually imposed were five years or more;

(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact;

(27) Aliens who the consular officer or the Attorney General knows or has reason to believe seek to enter the United States solely, principally, or incidentally to engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety or security of the United States;

(28) Aliens who are, or at any time have been, members of any of the following classes:

(F) Aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches (i) the overthrow by force, violence, or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either of specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage.

of Sinn Fein in the Republic of Ireland that the issue was brought forcefully to the attention of the Congress by the Irish-American Community.

Mr. O'Bradaigh had been invited and had accepted an invitation to appear at the Awards Luncheon of the International Gaelic Hall of Fame in West Orange, New Jersey on June 10, 1978. His visa was refused by the Department of State on May 24, 1978 under Sec. 212 (a)(28)(F) presumably as a terrorist supporter.

The visa files on these individuals are maintained by the Department of State under a security classification. Therefore, this report cannot discuss individual cases and charges which have prompted unfavorable decisions.

To bring further light on the entire visa issuing policy of the Department of State, as well as to reflect the applicants' view of this question, there follows, (a) excerpts of a transcription of the recording made at a meeting on August 28th at the U.S. Embassy in London between the delegation and the Counselor for Consular Affairs Norman Redden of the U.S. Embassy in London and the U.S. Consul General at Belfast, Charles R. Stout, (b) excerpts of the transcription of recordings made with various applicants whose visas were either revoked or denied, and (c) an informal communication furnished by the Department of State in reply to various questions raised on the visa issue:

A. MEETING WITH CONSULAR OFFICIALS, U.S. EMBASSY, LONDON

Mr. REDDEN. Section 212(a)9 prohibits the issuance of visa to anybody who is or has been or has been convicted of a crime involved in a felony.

That is such as murder as an example. Meanwhile, that person has been convicted. He then comes to us, having been released from prison and applies for a visa.

He is very much ineligible under section 212(a)9. However, he is also eligible for a waiver, of the grounds of ineligibility under section 212(d)3, provided we recommend or the State Department recommends, and the Attorney General, or more specifically, the Immigration and Naturalization Service concurs in the waiver of the grounds of ineligibility.

Also, in certain circumstances in which exclusion grounds can be waived by the Immigration Service under section 212(g), I think it is, for persons who are closely related to American citizens, such as a parent of an American citizen or spouse of an American citizen.

But, so far as the temporary waiver is concerned let us assume that one of the people we are speaking of in Northern Ireland was convicted of murder, let us say. Or, of a felony of some type or other.

He/she has served her time if there was a sentence. In due course he happens to come to us and apply for a visa, says he or she wanted to go over and visit cousins, States, or family, and we are satisfied that the person is a bona fide non-immigrant. That is that they have no intention of remaining in the United States.

We will then, other things being equal, having gotten our hands on the courts records to make sure that we have covered the background of the case adequately, so that we can then report to the Immigration Service that so and so wishes to have a waiver or a temporary trip to the United States.

I might say that going back to having done the background of these cases, the Immigration Service is not going to grant the waiver unless it is satisfied that we have done our homework satisfactorily, and that we have given to the Immigration Service all of the facts that are needed.

The Immigration Service then, among other things, will check its look out file and consider the matter as long as they are satisfied that the person is

indeed a bona fide nonimmigrant unlikely to commit any crimes while in the United States, and based on our recommendation, or a recommendation to the Attorney General, will authorize a waiver on a temporary basis of grounds of ineligibility.

Mr. EILBERG. Is a visa ever denied merely upon the basis of an arrest alone without a conviction?

Mr. REDDEN. We would have no authority to deny a visa simply on the basis of an arrest.

Mr. EILBERG. And, you have the authority to deny a visa on the basis of membership in the IRA?

Mr. REDDEN. As I understand it, yes. Under section 212(a)28F, because it is considered an organization that is dedicated to overthrow of government officials or the assault of them.

Mr. EILBERG. Getting back to the area which concerns me probably the most, surely we must agree that there are cases, where there has been inhumane treatment and confessions being coerced.

Do you agree to that proposition, the proposition that there are coerced confessions in Northern Ireland?

Mr. REDDEN. This would be purely personal, because I am not—I don't know Northern Ireland. I have some—I happen to think that the situation is not at all that good there, and that there are. But, this is purely personal. I don't know, Mr. Stout knows the situation 1000 times better than I.

Mr. EILBERG. Are there any there?

Mr. STOUT. Yes, sir, many.

Mr. EILBERG. And, you think if there is a coerced confession resulting in a conviction for such a person, he should nevertheless be denied a visa?

Mr. STOUT. I don't know how I could determine whether a confession had been coerced myself. I could not determine that myself.

Mr. EILBERG. So, the defendant alone at that point would not satisfy you?

Mr. STOUT. No.

Mr. EILBERG. Nor the statement of his doctor or lawyer?

Mr. STOUT. Not necessarily. In a case of this sort, if one were presented to me, I would seek instructions from the Department. I wouldn't decide on it myself. I am not important in this judgment.

Mr. CLINE. But, you gather all the material that would comprise the file and then send the file to Washington?

Mr. STOUT. Of course. I have never—to my knowledge we have never had such a case in Belfast.

Mr. CLINE. Has Washington ever come back to you, both of you have just mentioned it having happened in Belfast, but to your knowledge has Washington come back to this post in Belfast seeking additional information, or clarification of information?

Mr. STOUT. Oh yes. On a case of possible refusal?

Mr. CLINE. Correct.

Mr. STOUT. Yes.

Mr. FISH. In case you don't anticipate issuing the visa within 24 hours, you have lookout cards. They would show all the suspected provisional IRA members.

Mr. STOUT. No, by no means. Our lookout cards are of two different types. One comes from the Department of State.

Second, our own lookout cards, which consist essentially of our own refusals under various provisions of law.

And, also for matters of public knowledge, we screen the newspapers.

Mr. FISH. For convictions.

Mr. STOUT. That is right. When we find a conviction we make a lookout card for it. If the person applies we confront him with what is in the public record, the newspaper record, and ask him to provide a court record.

Mr. FISH. Do you recall the figures of Amnesty International Report in June, counting the number of convictions handed down by the court. These would all be published in the newspapers?

Mr. STOUT. No, not all of them. Some of the principal cases are. It is not complete by any means. We don't have anything like a couple of thousand lookout cards of that sort.

Mr. REGIS. Your lookout cards are all made up locally?

Mr. STOUT. That is right.

Mr. REGIS. Therefore, it depends on how closely you scrutinize the newspapers?

Mr. STOUT. That is right, and how much the newspapers report. I expect we have a small proportion of the total convictions.

Mr. REGIS. But now, when you deny visas to members of the IRA, that information is in the lookout files?

Mr. STOUT. No; well, yes of course.

Mr. REGIS. Now, is that based on local gathering of the information or does this information also come in from some other intelligence sources, like from London?

Mr. STOUT. Do you mean the refusal or——

Mr. REGIS. No, You turn somebody down because he is a member of the IRA?

Mr. STOUT. Yes.

Mr. REGIS. That, per se, is ineligibility?

Mr. STOUT. Well, when we have a case of this sort, where we think there is a possibility of ineligibility, we refer the case to the Department by telegram.

Mr. REGIS. Yes, well I am trying to get at is how do you get information of membership in the IRA without any recorded conviction.

Mr. STOUT. Well, we may have something in the lookout file. We may know of the man. In a very few cases, as I mentioned to you——

Mr. REGIS. But, how do you know something about the man?

Mr. STOUT. By what we hear from the papers, from people. There are very, very few cases if you recall We have about eight cases in the past 10 years.

Mr. REGIS. That is only because you have a limited amount of information.

Mr. STOUT. That is right.

Mr. REGIS. If you had all of the membership lists of the IRA, your refusals would go sky high.

Mr. STOUT. No they wouldn't, because I don't think they would be applying.

Mr. REGIS. But, even if they did your lookout would expand quite a bit.

Mr. STOUT. Of course.

Mr. REGIS. So, what you in fact are doing is a hit and miss proposition?

Mr. STOUT. Absolutely. We don't know, and we have no way of checking.

Mr. REGIS. You mentioned the microfiche system

Mr. REDDEN. That is a worldwide system.

Mr. REGIS. They don't have IRA. You don't think that they have the IRA activist in there?

Mr. REDDEN. Chief people only. Very few people.

Mr. FISH. How about—how about the other paramilitary organizations. You just don't restrict it to provisional IRA.

Mr. STOUT. No, of course not.

Mr. FISH. What other paramilitary people do you find?

Mr. STOUT. Well, the official IRA, the IRSP, the Irish Republican Socialist Party.

Mr. FISH. The IRSP?

Mr. STOUT. IRSP, Irish Republican Socialist Party, which is an offshoot of the Official IRA.

Mr. REGIS. This is a marxist oriented party, isn't it?

Mr. STOUT. Yes. The Ulster Defense Association, UDA, which is Protestant, the principal Protestant paramilitary.

Mr. FISH. How many of those persons do you have on file?

Mr. STOUT. We don't have many.

Mr. FISH. How much information do you have on those people?

Mr. STOUT. Very little. We would have only the lookout cards for convictions.

Mr. FISH. So, membership, per se, in that organization does not constitute a refusal.

Mr. STOUT. That is correct.

Mr. REGIS. But it does, per se, constitute an ineligibility for a member of the IRA?

Mr. STOUT. This is the Department's determination, as I understand it. As I see it the UDA is a different type of organization. Its aims are different.

It does not try to overthrow the government in Northern Ireland, or kill police. To my knowledge this is a political question.

Mr. REGIS. We realize that because that would be overthrowing their own government.

Mr. STOUT. That is right. It does not try to kill government officials, the police and the army. The IRA does. It is a different thing. It is still considered criminal.

Mr. REGIS. The ins and the outs.

Mr. STOUT. Well, yes. But, you know, looking at the visa law and I am no expert in the visa law. I follow the determination of the Department.

Mr. REGIS. They are in fact terrorists, are they not?

Mr. STOUT. Yes.

Mr. REGIS. They participate in a tit for tat war?

Mr. STOUT. That is right.

Mr. REGIS. You kill one and they kill the other.

Mr. STOUT. That is right.

Mr. REGIS. So, in that way wouldn't that open some questions on ineligibility?

Mr. STOUT. If they had committed a felony. Now, you can take this to the Department. I am no expert, Mr. Regis.

Mr. REGIS. How about the Ulster Volunteer Force?

Mr. STOUT. I was going to mention that. They also are a Protestant paramilitary organization. There is a difference between them and the UDA. They are legally proscribed, the UDA is not.

Mr. REGIS. Legally proscribed, but you don't carry that determination over in your eligibility criteria?

Mr. STOUT. No. Well, the Department, I don't think the Department does. I have no information to that effect.

Mr. REGIS. How about the Red Hand Commandos?

Mr. STOUT. Exactly. That is another paramilitary offshoot. Well, the UVF is more extreme than the UDA. The Red Hand Commandos is more extreme than the UVF, and they are a very small group.

Mr. REGIS. Do you have any identification of these persons?

Mr. STOUT. I haven't seen any. I have not gone through that lookout file, you know, piece by piece. I don't know what is in there.

The things that I have seen have consisted on the whole of these little cards showing the newspaper clipping. Now the clipping, the note in the lookout file, doesn't say what the man's membership is, whether he is Protestant, Catholic or what?

Mr. REGIS. Does the CIA have anything to do with this question?

Mr. STOUT. No.

Mr. CLINE. Do you send copies of your lookout cards to Washington to the Visa office?

Mr. STOUT. Not of these, not of these local ones, no. Of the refusals, yes.

Mr. REGIS. So, in other words the determination has been made in Washington that IRA is bad and all of these other paramilitary outfits, the Protestants, are not so bad because they are not seeking to overthrow the established government?

Mr. STOUT. Wait a minute, Mr. Regis, I am not saying that. Let me say this. In my file, my instructions are, and my understanding is, that in cases of presumed or suspected membership in the provisional or the official IRA, I am to send all of those cases to the Department for determination.

I have no instructions on the other organizations.

Mr. REGIS. How do you account for that?

Mr. STOUT. I presume because of the argument I have given to you, but I don't know.

Mr. REGIS. But, if this organization is also advocating a separate Federal government, wouldn't that be overthrowing the established order?

Mr. STOUT. The UDA?

Mr. REGIS. Yes.

Mr. STOUT. No, because what they are talking about now is a negotiated independence of Northern Ireland, not by force.

Mr. REGIS. And the Ulster Volunteer Force.

Mr. STOUT. The UVF is not talking about anything. They are not in this.

The UDA apparently, as I understand it, is trying to move from violence to political action.

They are studying the possibility of an independent Northern Ireland, a negotiated independence under which the United Kingdom would withdraw its sovereignty, and Great Britain and Ireland would guarantee the independence of Northern Ireland. It would be a political solution and not one by violence.

Mr. FISH. What is the Ulster Defense Regiment?

Mr. STOUT. The Ulster Defense Regiment is a part time military force of the government. It is more like the National Guard.

Mr. FISH. What does UDA stand for?

Mr. STOUT. Ulster Defense Association.

Mr. EILBERG. In the case of Pearse Kerr, he was incarcerated three months, and there were charges against him.

Mr. STOUT. There were charges against him. May I mention this, after the—well, as you know the police can hold a man a few days or seven days, after which or during which, in order to hold him further they must make charges to the DPP.

I beg your pardon, not to the DPP to the magistrate. There is a hearing with the magistrate. The police make their charges, and must present, you know, the nature of the case against the man. It is a judicial procedure.

Mr. EILBERG. When is the hearing? I mean, how does the law provide for the hearing?

Mr. STOUT. I don't know. But, they do take him to a magistrate and the magistrate and the magistrate decides whether there is enough evidence to hold the man on remand pending the procedure that I mentioned to you, submission to the DPP and the DPP's submission to the court for trial.

The magistrate, at that time, also determines whether bail will be offered, will be granted, requested.

Mr. EILBERG. Pearse Kerr was held on remand.

Mr. STOUT. That is right.

Mr. EILBERG. I had a visit from an official from the British embassy in Washington, informing me that he had been formally charged, that he had been indicted.

Mr. STOUT. That is right. There were charges against him.

Mr. EILBERG. I asked when he would come up for trial, and they said the process was five months. They could not be precise.

Mr. STOUT. That was an estimation. They couldn't have known because it didn't depend on the charges.

Mr. EILBERG. Well, precisely.

Mr. STOUT. Exactly.

Mr. EILBERG. But I wanted to hear what they would say. At that point it was made very clear to me that he might be dismissed or released at that point without any further investigation or trial.

Mr. STOUT. That is right. Oh yes.

Mr. EILBERG. The appearance before the Judge would be, as I understood it, the nature of another preliminary hearing.

They would not say that, that there would be the trial. They said that it may be decided at that point that a trial would not be necessary.

Mr. STOUT. In order for a man to be remanded for trial, the suspect, after the police have interrogated him and made their case, they take the case to the magistrate and he decides whether there is enough evidence to remand the person for trial.

If he is remanded he goes to Crumlin Road Jail, if he is remanded ordinarily. Some may go to the Maze. (Long Kesh) The deeper police investigation goes forward.

But the charges, the preliminary charges, have been presented to the magistrate, with what the police think he is guilty of.

Then when the police investigation is completed it goes to the Director of Public Prosecution (DPP) and the more explicit charges are made by the police.

The DPP, if he decides to carry the case forward, sends it to a judge with possibly different charges. Or they may be the same charges with others added.

He then enters a plea before the Judge based on the formal indictment, which was brought forward by the DPP.

When he sends a case forward to the Judge it goes on the court calendar, and it takes as long as it takes to get to the case to trial.

Mr. EILBERG. The British embassy officials also told me that charges, or circumstances really were not definite, they were looking at other potential charges—

Mr. STOUT. In discussing the Pearse Kerr case, as I recall the case and I am vague on the initial charge. He was alleged to be an officer of the junior branch of the provisional IRA, that was why he was arrested, because that is a legal offense.

Second, that he was allegedly planning some kind of action. I was told this informally by police officers.

Mr. EILBERG. The offense was membership in the IRA.

Mr. STOUT. That is right, as an officer.

Mr. EILBERG. He also was charged with possession of a gun.

Mr. STOUT. That is right.

Mr. EILBERG. I was told that both of those charges, had been dropped and they were looking at two other possible charges, one was a possible hijacking of a truck.

Mr. STOUT. I never heard of that one.

Mr. EILBERG. And, there was no hearing at that point with respect to the other things that the government was looking into?

Mr. STOUT. Well, Mr. Chairman, I can't comment on this. I don't know.

My impression is that the police believed all the time that he was indeed an officer in the junior branch of the provisional IRA.

That he had been engaged with four others in planning for a specific attack on a commercial establishment, firebomb attack on the establishment.

That they were gathering the evidence against these people, Kerr plus four others on that attack. That their expectation was this would be the principal formal charge against them.

I imagine if he had gone to trial he would have been charged with this if they had had the evidence, and the DPP had accepted it, and he would also have been charged with membership in the provisional IRA.

Generally they put in everything against the man that they have. But, it didn't go that far, of course, because the DPP did not accept the case.

May I add a comment in our earlier conversation. You have asked me to describe the system. We had gotten far as the DPP.

Now, if the DPP accepts this police investigation—and determines there is sufficient basis for a trial, he then sends it to the courts, and when the case comes up on the calendar it goes before a Judge, whoever happens to be in line.

As you know, it is a Diplock court, one judge, no jury.

It is generally believed in Northern Ireland that there are a few hard Judges who are particularly tough on both sides of the extremes of the paramilitary people.

But, in general the judiciary, the people who try these cases, have not been attacked or criticized as a whole for being partial.

On the whole it is considered that they have done quite a good job. I have heard it said that they even are more careful with these Diplock cases than perhaps in a normal trial, because the full responsibility is on them, only on them. There is no jury behind them. Therefore, they weigh the evidence even more carefully than they might in a normal trial.

There have been cases where the judges have thrown out cases where they believe, or where they were not convinced that the man had not been mistreated.

You have an appointment with Sir Robert Lowry, the Lord Chief Justice of the High Court, who heads this system and he has tried some of those cases himself, and he also has thrown out some cases on this basis.

Mr. EILBERG. I understand that you are concerned with maintaining the friendly relations with the British, is that true?

Mr. STOUT. Of course it is.

Mr. EILBERG. I think it is also true that we hesitate to attack their system.

Mr. STOUT. Well, that is not true. Well, it is true to the extent that it would be. I think, a diplomatic discourtesy to go around attacking without ample cause.

Mr. EILBERG. Do you believe that Pearse Kerr's confession was voluntary? You saw it.

Mr. STOUT. Oh yes, of course I saw it. I am not sure I should answer that. This was a matter that was before the courts, and this is a matter of record now. It is a personal judgment, but I assumed that Kerr was innocent, as I must have.

He told us, he told Alan Roy, the Consul, the second time Roy saw him that he had been mistreated. Specifically that his wrist had been held back, and indeed a doctor had diagnosed a hair fracture in his wrist.

He said, as I recall, his hair had been pulled and he had been punched once or twice, and so on. It may have happened. I find it credible that it could have.

Mr. EILBERG. You think it is credible, now what did you do?

Mr. STOUT. We made a complaint and asked for an investigation and a report. Relative to other cases of denials—James Drumm, of course was ours, and Mary Drumm. They made it a practice, as you have here, of coming in every year or more frequently. Patrick Henderson, certainly, was an immigration case. We sent the information in.

Brendan Holland was one of ours. Seamus Loughram again, we issued him a visa and the visa was revoked by the Department.

McCullough, again, was ours. McDonnell, those are the ones, the others are Dublins.

Mr. EILBERG. Your office was reluctant to press the Pearse Kerr matter for his benefit, as I recall a cable. You didn't want to rock the boat.

Mr. STOUT. No, nothing was said in a cable about rocking the boat. I don't know who might have said that.

Mr. EILBERG. I am sorry, I don't have the cable with me. I will show you our cable and I don't think you ever said rock the boat.

Mr. STOUT. In any case, Chairman, we have to use our judgment on how best to act. Now, I am not commenting specifically on Kerr, but you may find that it could be counter productive in a specific case to do more beyond a certain point.

Now on Kerr I acted as strongly as I felt was justified, a matter of my judgment. I kept after the Chief Constable. I saw him, I mentioned this to him several times.

We kept after the police officers involved in the case, who were investigating it. Our concern was primarily to get it moving quickly.

I felt that the case moved pretty quickly by local standards.

Mr. EILBERG. What is normal by local standards?

Mr. STOUT. Well, it depends on the case, obviously. But, they can be several months, it can be longer than that before the DPP gets to them.

Mr. REDDEN. It can be that way here in Great Britain, when it comes to criminal cases. Unfortunately it is just the problem that the courts are overloaded. It is the same problem we have in the States, unfortunately. So that we have the same problems with the courts.

Mr. STOUT. That is right.

Mr. EILBERG. Except that we respond—

Mr. STOUT. Yes, of course.

Mr. EILBERG. So it is not the same—

Mr. REDDEN. No, you are right, of course. But, the point I wanted to make is that there is a backlog of cases, and in both GB as well as Northern Ireland.

B. VISA DENIALS OR REVOCATIONS OF IRISH NATIONALS

Name and address at time of application	Applied	Stated purpose	Refused	Section of law
Cahill, Joseph, 69 Beechview Park, Belfast.	Nov. 6, 1970, Belfast.	Tourism.....	Issued by revoked Sept. 2, 1971, by Department.	212(a)(9), (19) and (28)(F).
Cahill, Joseph, 41 Templeville Rd., Dublin.	Aug. 12, 1975, Dublin.	Attend conference...	Aug. 8, 1975, Dublin.	212(a)(28)(F).
Costello, Seamus, 5 Cornelscourt, Bray Rd., Foxrock, Dublin.	July 7, 1975, Dublin.	Lecture tour.....	July 7, 1975, Dublin.	212(a)(28)(F).
Drumm, James, 12 Glassmullin Gardens, Belfast.	Aug. 10, 1972, Aug. 29, 1973, Aug. 1, 1974, Aug. 22, 1975, Oct. 28, 1975, September 1977, Jan. 18, 1978, Belfast.	1-mo visit to relatives (same purpose each application).	Aug. 23, 1972, Aug. 29, 1973, Aug. 1, 1974, Aug. 22, 1975, Oct. 28, 1975, September 1977, Jan. 18, 1978, Belfast.	212(a)(28)(F).
Drumm, Mary, 12 Glassmullin Gardens, Belfast.	(1).....	(1).....	(1).....	(1).
Goulding, Cathal, 27 St. Edna's Dr., Rathfarnham, Dublin.	Oct. 10, 1969, Dublin.	Attend conference...	Issued by revoked Sept. 15, 1972, by Department.	212(a)(27).
Henderson, Patrick J., 100 Beechmount Pass, Belfast.	April 1976, Belfast.	Immigration.....	Sept. 1, 1976, Belfast.	212(a)(28)(F).
Holland, Brendan H., (no address given).	February 1978, Belfast.	Attend and participate in New York St. Patrick's Day celebrations.	Mar. 22, 1978, Belfast.	212(a)(9), (10) and 28(F).
Keenan, John, 75 Ennafort Park, Raheny, Dublin.	Aug. 12, 1975, Dublin.	Attend Irish forum..	Aug. 12, 1975.....	212(a)(28)(F).
Kelly, Luke, 5 Kenilworth Rd., Dublin.	Oct. 14, 1969, Feb. 24, 1971, (Dublin).	Visit..... Visit.....	Issued..... Issued but revoked by Department, Oct. 16, 1973.	212(a)(28)(F).
Loughran, Seamus, 3 Gransha Way, Belfast.	Apr. 19, 1974.....	Visit.....	Issued but revoked by Department, March 1975.	212(a)(28)(F).
McCullough, John F., 29 Braemar St., Belfast.	February 1976, Belfast.	Visit New York for St. Patrick's Day parade.	Mar. 1, 1976, Belfast.	212(a)(28)(F).
McDonnell, Patrick B., 12 Slemish Way, Belfast.	May 1974, Belfast...	Visit aunt.....	July 1974, Belfast...	212(a)(28)(F).
McGill, John, County Leitrim.	Dublin (date unavailable).	Unavailable.....	Issued but revoked Aug. 18, 1975.	212(a)(28)(F).
Murohy, Daniel, 16 Emmet Rd., Dublin.	Sept. 2, 1975, Dublin.	Business.....	Sept. 2, 1975.....	212(a)(28)(F).
O'Bradaigh, Ruairi, Galway Rd., Roscommon.	Feb. 4, 1972..... June 20, 1977..... Aug. 11, 1977..... May 21, 1978, Dublin.	Visit..... Visit..... Attend conference..... Attend conference.....	Issued but revoked Mar. 8, 1977. June 26, 1977..... Aug. 11, 1977..... May 24, 1978, Dublin.	212(a)(28)(F). 212(a)(28)(F). 212(a)(28)(F). 212(a)(28)(F).
Stagg, Joseph, 9 Turret Rd., Palmerston, Dublin.	Aug. 9, 1977, Dublin.	Visit relatives.....	Issued but revoked by Department, Feb. 6, 1978.	212(a)(27) and (28)(F).
Stagg, Mary T. (same as husband Joseph above).	Jan. 29, 1978, Dublin.	Holidays.....	Feb. 21, 1978, Dublin.	212(a)(27).
O'Connell, Deirdre, 75 Elfort Park, Dublin.	Dec. 30, 1974, Dublin.	3-wk vacation.....	Dec. 30, 1974, Jan. 15, 1978, Dublin.	212(a)(28)(F).
McMullen, Peter Gabriel, (also known as Kevin O'Shaughnessy), 71 Cromcastle Rd., Kilmore, Dublin 5.	Jan. 18, 1978..... Apr. 24, 1978..	3-wk visit on death of brother-in-law. 10-day visit to relatives.	Jan. 18, 1978..... Apr. 25, 1978, May 22, 1978	212(a)(28)(F). 212(a)(19).

¹ Same data as husband James Drumm above, through Oct. 28, 1975, refusal. Died in 1976.

C. DEPARTMENT OF STATE POLICY AND PROCEDURES FOR ISSUING VISAS TO IRISH NATIONALS

Certain policies and procedures employed by the Department of State in issuing visas were still unclear to the delegation upon its return to Washington. In an attempt to clarify these points, the delegation informally requested additional information from the Department. The following letter and questions and answers are a result of this informal inquiry:

DEPARTMENT OF STATE,
ASSISTANT SECRETARY FOR CONSULAR AFFAIRS,
Washington, October 11, 1978.

Mr. GARNER J. CLINE,
*Staff Director, Committee on the Judiciary,
House of Representatives, Washington, D.C.*

DEAR MR. CLINE: Since providing answers recently to Mr. Eilberg's questions on the denial of visas to Irish nationals, we have received further information from our Consulate General in Belfast.

With reference to the Chairman's concern that applicants were being denied visas solely on the basis of membership in the IRA, the post has researched their past records for a ten-year period, and assures that no applications have been denied solely on this ground. They assure also that membership is not being used as a basis for refusal at the present time.

The post acknowledged that confusion may have arisen through initial remarks on this subject made at the beginning of the Chairman's visit, but understood these remarks to have been corrected later to reflect the fact that membership per se was not a ground for ineligibility. The post will, of course, continue to follow the required procedures in any future cases of possible ineligibility under INA Sections 212(a)(27) and (28)(F), which mandate a Departmental advisory opinion in each case. There should therefore be no occasion of denial of a visa based solely upon the applicant's membership in the IRA.

I hope that this clarification will be of use to you, and if I may help you further please let me know.

Sincerely,

HUME HORAN,
Deputy Assistant Secretary.

1. *Question.* On what basis are Irish nationals, both North and South, being denied nonimmigrant and immigrant visas?

Answer. Visa applications submitted by nationals of Ireland and British subjects residing in Northern Ireland are processed and adjudicated—as others elsewhere are—according to the provisions of the Immigration and Nationality Act. The criteria applied in reaching decisions to issue or refuse such applications are those utilized in adjudicating applications in all countries worldwide. These applications are not subject to any unique procedures or regulations.

2. *Question.* What procedure is followed by the State Department in issuing or denying these visas?

Answer. Most nonimmigrant and immigrant visa applications are adjudicated at the Embassy or Consulate to which they are submitted. In cases of certain types of suspected or probable ineligibility, current regulations require that the Department render an advisory opinion before the application may be finally adjudicated. When such an opinion is required, the Department renders it as soon as possible after the facts of the case have been forwarded to the Department by the consular officer.

Question. What part does the Consulate General in Belfast play in issuing or denying these visas?

Answer. If an application is submitted to the Consulate General in Belfast, the adjudicating consular officer may determine the applicant to be qualified on the basis of a written application alone. If the officer believes an applicant may be ineligible, the applicant must appear for a personal interview. The consular officer must in either case consult all sources of information which he believes may disclose data affecting the applicant's eligibility. A list of usual sources, available in a classified appendix to the Foreign Affairs Manual, is consulted by all consular officers worldwide in connection with the adjudication of visa applications. Unless available information appears to render the applicant ineligible on certain proscribed grounds, the consular officer may adjudicate the application without reference to the Department. If the opposite is the case, the Department's advisory opinion is requested and rendered according to the procedure outlined above.

We have recently cabled our Consulate in Belfast to ensure that these established procedures are being followed in cases of applications by known or suspected members of the Irish Republican Army (State 233131 dated September 13, 1978).

Question. What part does the Consul General in London play in issuing or denying these visas?

Answer. The Department is unaware of any special role played by the Consul General in London in the adjudication of visa applications submitted to post in Ireland. If the application is submitted at London, the Embassy consular section adjudicates the application in a manner identical to that followed at Belfast.

3. *Question.* What organizations are on the proscribed list for visa issuance? How is this list compiled? Does mere suspicion of membership constitute valid reason for denial?

Answer. The organizations appearing on the "proscribed list" are those found in the classified appendix to the Foreign Affairs Manual mentioned above. This list contains organizations extant in all non-communist countries worldwide. The Irish Republican Army does not appear in the section of the list pertaining to Ireland or the United Kingdom, nor in any other section of the list.

The list is compiled from reports by consular officers and reports received from other U.S. government agencies. The Department assembles and analyzes these reports to determine whether the organization in question falls within the purview of sub-section 212(a)(28) of the Immigration and Nationality Act. Similarly, the Department periodically reviews updated reports on organizations to determine whether the organizations may have changed in nature and no longer fall within the purview of the cited section. The Department regularly

adds and deletes organizations from the lists according to decisions rendered following such analysis.

Mere suspicion of membership in a proscribed organization does not normally constitute grounds for denial of an application. The applicant's claims are evaluated against available information on a case-by-case basis. The Department's advisory opinion is often required in such cases.

4. *Question.* What efforts are being made to determine detention or prison terms for individuals in Northern Ireland? Are these prison terms or detention terms considered valid reasons for denials?

Answer. Since detention and prison terms may render an applicant ineligible under several subsections of section 212(a) of the Immigration and Nationality Act, every effort is made to determine whether any applicant has been so confined. For example, conviction of a crime involving moral turpitude is a ground for denial under subsection 212(a)(9); conviction of a crime involving prostitution is a ground for denial under subsection 212(a)(12); conviction of a crime involving narcotics trafficking is a ground for denial under subsection 212(a)(23); etc. Conviction or detention for terrorist activities generally render an alien ineligible under subsection 212(a)(28)(F). If the consular officer knows or has reason to believe that an applicant intends to engage in terrorist or terrorist-supporting activities while in the United States, the applicant is also ineligible under subsection 212(a)(27).

MEMBERSHIP IN THE IRA AS A FACTOR IN DETERMINING VISA INELIGIBILITY

1. In a meeting with Representative Eilberg, Chairman of the House Judiciary Subcommittee on Immigration, the Department was told that in Belfast, membership in the IRA is considered a ground of ineligibility. The department would appreciate the post's comments on this.

2. If Visa applications have been denied solely on the basis of membership in the IRA, the post is requested [A] to report the number of such refusals since January 1, 1977; [B] to review each such refusal and report the results of these reviews to the department; and [C] ensure that membership in the IRA is not used as a ground of refusal.

D. MEETINGS WITH CERTAIN VISA APPLICANTS

The excerpts from the transcription of recordings which follow are the views expressed by Messrs. O'Brady, Cahill, McGuirl, and Stagg, all of whom have had visas revoked or denied, as well as with David O'Connell, a prospective visa applicant.

The meetings with these persons were held in the Shelbourne Hotel in Dublin on September 1, 1978.

Mr. CLINE. Friday, September 1, 1978. Shelbourne Hotel in Dublin. The next meeting is with Ruairi O'Brady.

Mr. O'BRADY. Well, I am registered as O'Brady, Peter Roger Casement. I write my name in Irish, which is Ruairi O'Bradaigh; and this has become a bone of contention with the American Embassy here. They don't seem to realize that this is a bilingual country, and both languages are used. People write their names,

they may well be registered at birth one way, and they write their name another way.

Mr. EILBERG. I didn't ask you the question to embarrass you in any way.

Mr. O'BADY. No, no, I just wanted to make it clear for the record because I am touchy on that one. I never had a passport in my life until 1971, and in 1972 in February, I was invited to go to the United States. I applied for a visa and was granted an indefinite visa for multiple entries on, I believe, the ninth of February, 1972.

I went to New York and then to Boston and Cleveland, Ohio, and then to Philadelphia; came back to New York and went home. That was my first visit.

My second visit—yes?

Mr. EILBERG. Can you tell me just generally what you did during those visits?

Mr. O'BADY. Yes. I was invited to speak at a dinner being organized in Boston, and that I did. As well as that, I gave numerous interviews on radio and television and to newspaper reporters, and it was just five days which was very, very busy.

As I said, New York first, then Boston. From there to Philadelphia; from there to Cleveland, back to New York and home.

Mr. EILBERG. I am from Philadelphia.

Mr. O'BADY. Fine, fine.

Mr. EILBERG. We have a very good, fine community there, and I am sure you got to know some of the leaders of our Philadelphia community.

Mr. O'BADY. Yes, indeed. Hugh Breen, I know him very well. Have been in his house there.

Now, the second occasion on which I went to America was in April of the same year. A television program was arranged dealing with the situation in Ireland. That was in April of '72.

The program was called The Advocates; it was done coast-to-coast in Boston, and Michael Dukakis, who is at present the governor of Massachusetts, was there.

The people who were having the program invited me out, and I appeared on the program with a lot of interesting people, including Mr. William Craig, Mr. Michael O'Kennedy, who is now Foreign Minister of the Dublin government and who was at that time a junior minister for education and had no scruples in appearing on the program with me.

Well, I came back immediately from that. I think I was only four or five days on that occasion too.

The next time I went out was in July of '73, and I was there for three weeks. Now, during that time, I toured a lot of the east coast cities. As well as New York, I went to Buffalo, Philadelphia; I can't remember the name of the place in Connecticut. Let me think. Yes, Hartford, Connecticut.

Boston, a number of other places, but these are all on the record. I have given these to the American Embassy long since. I stayed in New York and did a lot of publicity work, the Time-Life magazine and every radio, television program, every newspaper reporter or journalist, anyone that I could get across to, to put the situation in Ireland as I saw it. Had a very busy time.

That was the third time, I came back on the third of August, 1973. The fourth time I was invited to Washington. Oh, incidentally, I was in Washington also in July.

Now, the fourth time, I was invited to Washington. There were hearings into human rights, and this was an international committee inquiring into human rights.

Mr. CLINE. Chaired by Mr. Rosenthal?

Mr. O'BADY. Yes. I gave evidence, and that is part of the record, and my evidence and my submissions on that occasion with regard to 26 counties.

That was my last visit to America. I just went to New York, from there to Washington, back to New York and back home. It lasted about seven days.

Now the following January, I was invited to speak at an annual testimonial dinner in New York, and I had arranged to go, and I reached Shannon. When I reached Shannon, the travel agent contacted me and said that my visa had been revoked, so I rang the American Embassy, and they put me in touch with a man called Mr. Sorenson.

He told me that that was so and that there was nothing I could do about it, that I should come up and see him. I said, "If I go up and see you, the dinner will

be over." So we talked on the telephone forward and back. He tried to get a waiver, but nothing came of it.

Well, that was the way until last year, 1977, and I was invited to the New York State Convention of the Ancient Order of Hibernians in Buffalo, in I think June. These are approximate dates.

So I made an application for a visa and was refused. In November, I had another invitation due to one to the Celtic Society of Columbia University to address them. That, too, was refused; and finally, last June, the International Gaelic Hall of Fame invited me over to accept an award.

Within 48 hours this time I had a reply; it would just be a telephone message saying that it, too, was refused.

Mr. EILBERG. Ruairi, we are generally familiar with the history that you have just described, and we know that this decision was made at the highest level in the State Department, that a study was made and the fact of the matter that concerned them so very much was your apparent position, as leader, and I wish you would say whatever you can about that. What caused them to, in your mind, to maybe change their mind '74, '75. The impression that I have is that in your Anglicized name, let's say, they perhaps did not recognize you as the person that you are. Perhaps that is the way in which you were accepted, and the impression that I have is they suddenly realized who you were and decided to revoke your permission to come.

But that is just my guess. I would like to have your idea about that.

Mr. O'BRADY. Well, I think the visa was granted to me in February of '72. It wasn't revoked until January of '74. That is almost two years.

Both times in '72 and also in '73, when I was there, my visit was highly publicized. It wasn't a case of slipping in and slipping out. In fact, the more publicity I could generate, the more successful I would regard the visit.

There was no question of a secret. I think that in February of '72, when I got my visa, the State Department or whatever authority concerned hadn't started denying visas. So when they started denying visas, I think the first was Sean Keenan of Derry, then in due course they revoked mine; perhaps because of my name, they didn't reach it as quickly as they thought they would.

But they inferred, and this is something I objected to, that there was some type of deception involved in this, so I offered to show them my driving license, my motor insurance, my birth certificate, all of these things which would indicate that the English form of my name is how I was registered at birth.

Mr. EILBERG. So there was nothing that happened prior to the time of revocation that you are aware of that, any incident of any kind that might have caused them to change their mind about issuing the visa?

Mr. O'BRADY. Yes, there is. One thing that they have mentioned, and they said that I was, that I had served a term of imprisonment, six months in military custody here in the south, on a charge of membership of the IRA.

Now, I pointed out to them that that being in prison wasn't anything new as far as I was concerned, that this went back a long time.

Mr. EILBERG. When? When was that?

Mr. O'BRADY. This was in 1973. I was arrested at the end of '72, and so between the first two visits and the last two visits, I had served a term of imprisonment.

Mr. EILBERG. And that was for membership only.

Mr. O'BRADY. That is right, but I want to be very clear about this. The first thing is, it was not a charge before what would be generally considered a normal court. It was a special court which sits without a jury, an emergency court.

As well as that, new legislation was brought in here in the south at the end of 1972 to the effect that if a Chief Superintendent of Police gave his opinion that someone was a member of the IRA, that that was sufficient to convict and sentence that person.

Now, I was made the guinea pig. I was the first one, as the President of Sinn Fein, I was a prominent person, so I was arrested, and this was the test case.

I refused to plead before the court and remained silent. So the Chief Superintendent gave his opinion in one sentence, and that was it. So it was highly unusual and highly abnormal circumstances, and I would say entirely political.

My activities, the arrest, this was not normal law. This is special law; it, in fact, has been called constitutional law. The Tribunal sits without a jury. It can be composed of three military officers above the rank of commandant or of three judges.

In this case, it is composed of three judges, but there is no jury. So the first step was the jury was abolished. The second step was that the laws of evidence were changed. In fact, the evidence was abolished, and the prisoner is simply accused.

So under the offenses against the state, the Amendment Act of December, 1972, a Chief Superintendent of Police can declare his opinion, which is based on confidential information. And when cross examined, he can plead privilege as to his sources. He just declares his opinion in one line, that A.B. was a member of the IRA on a certain date, and then that is sufficient. There is no defense against that.

I was the first person taken up under this law. I was the guinea pig, and I was just accused, and the policeman gave his opinion. When I cross examined him, he pleaded privilege. So under these extraordinary laws, then I was found guilty and sentenced to six months in military custody, which I served.

But I came out in May of '73. In July I went to the States. I came back three weeks later, early in August. This was highly publicized. In October I was invited by the International Committee on Human Rights, part of the Foreign Affairs Committee, under Congressman Donald M. Fraser. I was invited to give evidence. I did again.

This was highly publicized, and it is in the record of the Committee. There was nothing at all about my visa or about the fact that I served a term of imprisonment until the following January when I was about to leave once more, and this time I was intercepted at Shannon by the travel agent who told me the American Embassy had revoked my visa.

Mr. FISH. Because of the multiple entry visa, you would not have had to have gone back to the Embassy each time you made a trip. Is that correct?

Mr. O'BRADY. Correct, it was indefinite and multiple entry.

Mr. EILBERG. Yours was the first case where membership in the Sinn Fein was regarded as the political arm of the IRA. Is that how this began?

Mr. O'BRADY. Oh, no. They didn't mention Sinn Fein at all. They mentioned nothing.

Mr. EILBERG. I see.

Mr. O'BRADY. They just come in and declare their opinion. That is all that is necessary under this extraordinary enactment. There are no ramifications to it. It is quite simple.

They just accuse you, and the policeman gives his opinion on oath. He is not available to be cross examined as to his sources, and that is the end of it.

Mr. EILBERG. Well, now in the State Department in looking into this matter, regards the Sinn Fein as the political arm of the IRA. They make this flat statement. They do not mention in the report anything about the conviction and the term that you served. This is not included.

They simply say that you are the leader of Sinn Fein and represent the political arm of the IRA, and I wonder if you could explore that a bit?

Mr. O'BRADY. Yes, in fact, I have been asked by the Consul here at the American Embassy about my record in that regard, so I gave her a list of convictions in terms of imprisonment and went back over 20 years, and they were all technical type offenses: refusing to answer questions, collecting funds for prisoners without a permit, holding a demonstration on the Golden Jubilee of the Easter Rising, these type of technical offenses, being interned without trial while I was an elected deputy.

The Embassy has all these; they asked me about them and I told them. Now, with regard to Sinn Fein—

Mr. FISH. May I ask a question? What time did the, what year was this that you told the Embassy about all these prior convictions?

Mr. EILBERG. One prior conviction, just one prior conviction by the Military Tribunal where he was accused of being a member of the IRA, no reference to his association with Sinn Fein at all here.

That is correct, isn't it?

Mr. O'BRADY. That is true, yes.

Mr. FISH. I thought that you just recounted numerous periods arrest records.

Mr. O'BRADY. I did. I was asked.

Mr. FISH. When was this? What year?

Mr. O'BRADY. Just give me a moment.

Mr. FISH. Within the last two years?

Mr. O'BRADY. Yes! While I renewed applications.

Mr. FISHER. But it was before the revocation or after the revocation?

Mr. O'BRADY. Oh, following the revocation. It was either 1977 or '78. I said that they were making a big thing about my name. They were accusing me of deception, and they said I wanted that cleared.

So the lady concerned said, "Well, no, but we are concerned with your political past," and so on, the times you have been in prison. So I said, "Do you want to know those?"

She said, "Yes."

I said, "Right! I will tell you all about them." I never concealed the fact. I said, "It may seem strange to you, but I am quite proud of this because I regard myself as a political dissident," and I noticed that President Kenyatta of Kenya has just been buried the other day. I remember when he was serving seven years, and later he was able to escort the Queen of England around Nairobi.

This is nothing strange in Irish history.

Mr. EILBERG. Well, would you mind repeating for my benefit? Perhaps Ham was listening more closely than I was. I did not understand you to be talking about subsequent arrests.

Mr. FISHER. Prior arrests. 20 years ago, a lifetime of arrests.

Mr. EILBERG. When was the last arrest before you were arrested for being a member of the IRA, what year approximately?

Mr. O'BRADY. Oh, 1959.

Mr. EILBERG. All right. Now, Ham, what I am repeating and you will have available to you, I don't think you have seen it yet, a report which indicates nothing in the State Department, consideration of this matter, about any criminal arrests, about any time that he served, may have served; and the sole issue is his being leader of the Sinn Fein party and this being the political arm of the IRA.

I just wanted to explore that idea with you.

Mr. O'BRADY. I will deal with this. This is the representation that is put on Sinn Fein by people who are hostile to us, especially the British government and British sources.

Sinn Fein is a very old organization, in fact, the oldest British organization in Ireland, being founded in 1905. In 1917, following the 1916 rising, Sinn Fein and the IRA agreed that they had a common objective, and that was to separate Ireland from England and to erect here a republic of the whole island.

So quite a number of organizations became associated together at that time, and they were loosely called "the Republican Movement." They were generally the organizations who were striving to break the connection between Ireland and England and erect Ireland into a republic.

This is an historic situation that involves quite a number of organizations that were generally known as republican organizations. That is the way, to the present day, so that in common parlance that Sinn Fein is the republican political party. There is nothing strange or wonderful about that. John Joe McGirl, there beside you was an elected deputy 20 years ago, the same time as myself and two others in the South and another two in the North.

We have a number of Councilors to sit on the various local government councils, and we have always had. We will be contesting those elections next year again.

So I would say that we are a regular political party.

Mr. EILBERG. Well, Ruairi, let me ask you this, and I don't do this, you know I am sure, for the purpose of cross examination in any sense. I want to, I would like to see you be able to visit the United States freely. You are an important figure, and you have something to say.

But I think that in order for us to help you, we have to ask maybe questions that are difficult.

Mr. O'BRADY. Yes.

Mr. EILBERG. My impression of the report, Ham, includes the fact that some individuals who are members of Sinn Fein are also members of the IRA or individuals who are members of the IRA are or become members of Sinn Fein. There is some interchangeability. Now, this is not clearly spelled out, but this impression is given, and I wonder if you could just comment on that.

Mr. O'BRADY. I will. As I said, since 1917, that is 61 years ago, all these organizations, of which Sinn Fein and the IRA are the most prominent, most well-known, have had a common objective, which I have explained to you.

The IRA, as is well-known works for that objective by force of arms. It is a military organization. Sinn Fein, on the other hand, is a civilian organization: it is the political organization, political party. It has the same ultimate objective

as the IRA and as other republican organizations, that is true; but that is nothing to be ashamed of. That is a very worthy objective, and we proclaim that as widely as possible.

But we work for it by political means. Now, if the State Department says there have been people who have been members of the IRA and are also members of Sinn Fein, I am sure they are members of other organizations, too. That may well be. But it is very clear that we are an old, established political party, in fact the oldest, in Ireland.

We are engaged in political campaigns.

Mr. EILBERG. Ruairi, can you help us in identifying, if you can, how the conclusion is arrived at that you are the political arm of the IRA. Was there any court decision or any incident or anything to your knowledge in which this idea began or was established in any way?

Mr. O'BRADY. This is the line that is taken by the British government and by British propagandists to discredit Sinn Fein. From 1956 until 1974, for 18 years, Sinn Fein was banned in the North of Ireland. That ban was revoked by the British Labor government in April of 1974.

Now at the time they banned it and oftentimes since, they have made this charge; there has been no court decision; there has been no evidence in this regard. In fact, the British government, in removing that ban, indicated that in their view, for what it is worth, that Sinn Fein was a legitimate political organization.

Mr. EILBERG. Who decided that? Who said that?

Mr. O'BRADY. Well, the British government removed the ban on Sinn Fein, which had existed from 1956 until 1974.

Mr. EILBERG. They did that in '74.

Mr. O'BRADY. April of 1974.

Mr. EILBERG. By what body or court of law did that occur if you know.

Mr. O'BRADY. Well, I don't think that you are familiar with the legal methods of procedure.

Mr. EILBERG. The reason why I asked it, the reason why I asked you the question, of course I am ignorant on the precise points involved; but I, for example, would like to have your matter reviewed and would like you to apply again, and I would feel proud if I could help you get a visa.

Mr. O'BRADY. Thank you.

Mr. FISH. Even though it is recognized today; Concannon said he hoped that the Sinn Fein would run candidates in Northern Ireland, he told us that the other day, that it is a recognized party.

What is interesting is that we are being told here that, and you are telling us categorically that, Sinn Fein is an old established political party and not the political arm of the IRA. This is confusion in our minds, and I was perfectly willing to accept it before now, because I heard it so often, but you are telling us that is a fabrication on the part of the British.

Mr. O'BRADY. No, I am saying that that is the way they misrepresent the relationship between Sinn Fein and the IRA because, of course, this is a propaganda war. This is a very useful thing for them to do.

If they believe it, well then the logical thing is that they should have Sinn Fein banned.

They did have it banned from '56 to '62. The relationship is that those two organizations, and many other organizations, share the same objective.

There was a point I wanted to make, and that is that you would expect that in accordance with law as you know it in America, that foreign organizations to be proscribed, there would have to be a court decision. That is not the way at all in Ireland.

Under British law in Ireland, under the Special Powers Act of 1922 in the North of Ireland, Sinn Fein was proscribed by ministerial order. He just writes an order, and that was done in December, 1956.

Similarly, the ban was removed by ministerial order. The Courts aren't involved at all. There is no decision. There is nothing to stand on. These are opinions. There is no court decision that Sinn Fein has such a relationship or this, that and the other.

These are opinions. They are propagandist views put out by people who have an interest, a clear interest, in discrediting people they don't agree with.

Mr. EILBERG. And my interest again is, let's put it in another way, is when, if and when Ruairi applies again, and I hope he will, that we might assist him;

and I think we have to know, you know, what the circumstances are so that we can—

Mr. FISH. Very much so.

Mr. EILBERG [continuing]. Use whatever influence or pressure we have to try to help.

Mr. O'BRADEY. Yes.

Mr. EILBERG. Ministerial order is interesting. I have heard about this before. It is a little like the terminology used in the case of pardon, a prerogative of mercy by the Crown; and yet it was Mason that has sole exercise of that prerogative. They really draw heavily on that and can have extraordinary powers at ministerial level.

Mr. O'BRADEY. Yes, that is the point.

Mr. FISH. It would not be known in the United States.

Mr. O'BRADEY. That is right and would be quite foreign to your view of law. In other words, it is a question of a government of men rather than a government of laws, and these things are done by whim, we would charge.

Mr. EILBERG. Ruairi, you are under absolutely no obligation to us, but for proper understanding and background and to help you and others who may be similarly situated, do you have available a summary or résumé or legal brief or any sort of paper which sets this forth very clearly?

In other words, if we go to bat for you, we would like to have the most effective legal argument that we can.

Mr. O'BRADEY. Yes, well, I don't have that here now because I wasn't aware of the grounds on which they were refusing the visa. If the grounds are not that I was sentenced by these special courts or that I am a political dissident, if the grounds are that I am President of Sinn Fein; well then, I would have to have something different to meet that charge.

Of course I am President of Sinn Fein. That question doesn't arise.

Mr. EILBERG. Ruairi, I would tell you with great certainty, I mean one can never tell what is in the back of their mind, you know, we are dealing with British opinions that have been written in this manner; but one does not know all the motivations that occur in the people that author the report.

But the sole basis given in that material I have read and governs this matter, deals solely with your presidency of Sinn Fein.

Mr. O'BRADEY. Well, then I think that I would need to supply to you the constitution of Sinn Fein, which is a public document. Also, much of the literature, the party political literature, which Sinn Fein publishes has this program, and also a résumé of the history of Sinn Fein and its position and its relationship with other organizations and my own position.

I am quite prepared to do that.

Mr. EILBERG. Fred, are you in a position to receive any material that we can get from Ruairi in any form.

We would like to have it for our own use on the behalf of human rights and behalf of freedom of travel and ideas, and certainly we do not sympathize with the repressive measures of which we have learned about during this visit in particular of the British government.

So, I mean, such a summary or gathering of them would be helpful to us in our understanding.

Mr. FISH. Could I add that if Mr. O'Bradaigh does plan to apply for a visa, that he would give us some advance notice. I think it is always tactically better to come in ahead of something and not be trying to overcome another refusal.

But if we had a couple of months notice before you were going to make this move, why I think it would be helpful to us.

Mr. O'BRADEY. Fine. I will bear that in mind and give you as much notice as is humanly possible. So as soon as I will get an invitation, I will immediately contact you, and say, "Well, I would like to take up this." I do, yes that is right.

Well I just want to say that I appreciate your interest and the trouble that you have taken in coming here, both of you Congressman Eilberg and Congressman Fish and your aides, Mr. Cline and Mr. Regis.

Mr. EILBERG. Ruairi, I understand that the two of your associates here have been refused visas, and we would like to learn a little bit about those. Ham, I am going to leave for a few minutes because downstairs, is the sister-in-law of the woman who has worked for me, and works for me now, for the past 20 years, and I just want to say "hello" to her.

Mr. FISH. Mr. Cahill, I happen to be familiar with your case because in Belfast I saw your file, and I went through it. You departed Dublin for New York on

September 1, 1971, and on September 2, 1971 the State Department revoked the multiple entry aspect of your visa; and then you were subject to a hearing in New York City for the next six days.

Mr. CAHILL. That is right.

Mr. FISH. The order following the hearing that the Immigration and Naturalization Service was holding in exclusion September 8 was and I quote, "on the grounds he attempted to enter without a valid visa," and you gentlemen can put some light on that. Does that mean that the grounds for issuing the visa were fraudulent in some way that rendered it invalid? Because it was certainly a valid visa technically as far as its date.

Mr. CAHILL. What they claimed in the hearings in New York was that I hadn't made an accurate application insofar as I did not complete the form. There is one part of the form that states: Have you ever been in prison? Have you had any criminal convictions against you?

Now, it is a fact that I did not fill that part in, but that was on the advice of the Consulate in Belfast in 1970 when I made an application for a visa. I explained to him the fact that I had been in prison, also explained to him the fact that as far as I was concerned, it was for political reasons.

He asked me the nature of the charge, the sentence, et cetera; and I said to him that was clearly political, and therefore I didn't have to fill it in as was stated on the form "criminal."

Mr. FISH. Do you remember his name?

Mr. CAHILL. I don't know unfortunately.

Mr. FISH. I think it was Lassiter. Does that ring a bell with you, the Vice-Consul by the name of Lassiter? It was interesting because to my knowledge, there is no follow-up on that in the file, that Lassiter was on home leave when the inquiry was made by the Department, and the file I saw in Belfast, that was the end of it. No one ever, there is no document there that Lassiter had ever pursued to either verify or in any way substantiate your claim.

Aside from that, there did seem to me to be a lot of backing and filling as far as the State Department position, that at that time they did not have a policy with respect to refusal of admission for IRA membership. That was sometime later, wasn't it, Jim, a few years later that this policy was laid down?

Mr. CLINE. Right.

Mr. FISH. And it seemed to revolve around an interview that appeared in the New York Times about the third of September, if you recall, and the statement you made about your purposes and goals; and one of them was, this is from memory now, killing as many British soldiers as possible.

The other statement made in the article was that the purpose of your visit was to raise money for arms. Then this was then answered itself by the person who wrote the article, he said that this was not something you said but something he assumed and wrote and he wanted the attribution to be correct.

Have you ever applied since that time?

Mr. CAHILL. I have, yes. I applied in 1975 for a visa.

Mr. FISH. Do you remember what they asked you?

Mr. CAHILL. It was a lady in the Embassy here in Dublin, and again, I had the application form. Again, there was this query: Have you ever been in prison? Have you criminal convictions against you? I didn't fill that out, and I brought it into the Embassy.

The lady there, I told her that I hadn't filled this in. I said this is the same problem as I had before. She took a list of the times that I had been in prison, and that is all there was to it.

Now, I was sent for by the Embassy here in Dublin, the American Embassy, and I was told that my application had been turned down.

Mr. FISH. Did she ask, do you recall at this time in 1975 when you applied for this, I take it it was a visitor's visa, a non-immigrant visa?

Mr. CAHILL. Yes.

Mr. FISH. Do you remember being asked whether or not you still subscribed to the statement that you favored killing as many British soldiers as possible? Do you remember her asking you that question?

Mr. CAHILL. She never asked me that question.

Mr. FISH. Thank you.

Mr. CAHILL. In fact, she was very friendly. She did suggest that as I had a heart complaint, there may be a back door way into America.

In 1970, I spent somewhere over three weeks in America on the visa that was granted to me, multiple entry visa. I traveled fairly extensively.

to me it was extensive; the first time out of Ireland and the first time in America, I was in New York; I was in Philadelphia, Chicago, San Francisco, Los Angeles, Buffalo, Boston, back to New York and then back to Ireland.

Again, as Ruairi O'Bradaigh said earlier on his visit, this was highly advertised. There was nothing secret about it. I went out there to appeal for funds for relief work in Ireland. I was very well received everywhere I went, and there was nothing secret about the visit.

In 1971 when I went to New York, it was a repeat of that operation, an appeal for funds for relief work which was more extensive then because we had had an internment that year. I was principally interested in that year to raise funds for an Irish organization for the relief of the dependents of political prisoners. That was my main purpose then.

There had been a lot of publicity about me here in Ireland. Those particular interviews you are talking about on the third of September.

Mr. FISH. That was the date it was published in the New York Times.

Mr. CAHILL. Yes. I don't recall that because immediately I got off the plane, I was arrested. I was brought to the Immigration Office and taken from there.

Mr. FISH. Well, the interview was taken here in Ireland before you left. It didn't appear in the New York Times until the third.

Mr. CAHILL. Yes.

Mr. FISH. That is why I am interested because the interview didn't appear until after the revocation.

Mr. CAHILL. That is true. There were two interviews here in Ireland before I left, the weekend before I left. There were two Irish papers here, the Sunday Press and Sunday Independent, and there was an interview in both those papers. Because at that particular time, there had been quite a lot of publicity about myself regarding my activities in the North of Ireland.

I certainly don't remember ever making any statement about that; and in view of the fact that I went to America to appeal for funds, I was very careful about what I said.

Mr. FISH. Since that time, this was a long time ago, September of 1971, September first, it is an anniversary today.

Mr. CAHILL. And it was an anniversary too. Thirty-six years ago I should have been hanged tomorrow.

Mr. FISH. Really? What do you say about that?

[Laughter]

Mr. FISH. In the intervening six years or seven years since 1971, can you tell us something about yourself here in Ireland since you came back in September of '71?

Mr. CAHILL. My activities?

Mr. FISH. Yes, and have you run into, has there been a problem since then?

Mr. CAHILL. I have it all written down. In 1973, I was arrested abroad a ship coming into Ireland with armaments. I was charged with importing of arms. I got several sentences, I think to a total of 11 years.

I completed somewhere about two years and was released on health grounds. And since then, I have been mainly involved in political work and relief work.

Mr. FISH. Well, I am glad to see you because I was told by friends of yours just a week or so ago, two weeks ago, that you were in the Mount Joy Jail, and so I can tell them you are not; and that you were celebrating the 36th anniversary of the date you were supposed to be hung.

Good! Okay. Thank you very much.

Mr. O'BRADY. Mr. McGirl, who is a local government councilman.

Mr. FISH. Say that again.

Mr. MCGIRL. John Joseph McGirl

Mr. O'BRADY. M-C-G-I-R-L.

That is right. He is a former Sinn Fein Deputy, and at the present time, he is a member of Leitrim County Council as a Sinn Fein Councillor.

Mr. FISH. He is an elected official of the Sinn Fein government in the County Council of the county of Leitrim, L-E-I-T-R-I-M.

Mr. O'BRADY. That is right. He is a former Member of Parliament.

Mr. FISH. We don't know when his visa was issued, but we know it was revoked August 18, 1975, under 212(a) (28) (F). We don't know the stated purpose of why the visa was issued. Maybe you could tell us that. Could you tell us when you applied and the purpose of the visa?

Mr. McGIRL. I was invited by the Leitrim Association in New York to go over there when I was released from Long Kesh, and I went on a six-week vacation. I attended as a guest of the Leitrim Association, the St. Patrick's Day parade, another function they arranged that night.

During my stay there, I spoke at a number of functions organized by them, various other organizations; and a few days before I left America, the FBI called the Northern Aid office and asked was I staying long, et cetera. So I told them it was a farewell to that nation if they wanted to hear all about it.

So when I returned home, was home a short time, they asked me to return my passport. So I sent on the passport and asked them to take it up in America to see what the reason was, and I never got a real satisfactory answer as to why they asked me to return my passport.

While in America, I went around there to the various cities very openly, spoke at various functions, particularly for the prisoners whom I had left in Long Kesh. I appealed for support for them, and I spoke at commemorations at New York, Philadelphia; and that is the story behind my visit to the United States of America.

Mr. FISH. And that was in what year you visited?

Mr. McGIRL. I was released '74 or '75.

Mr. O'BRADY. New Year '75. Easter '75.

Mr. FISH. So Easter of '75, and the revocation took place in August.

Mr. McGIRL. '74. What date was that?

Mr. FISH. The revocation was August 18, '75. That is the only date we have.

Mr. O'BRADY. Well, as I remember it, John Joe, you were arrested on Easter Sunday in '74 in Belfast.

Mr. FISH. You were interned without trial in Long Kesh until, was it December or January?

Mr. McGIRL. December, no January, sorry. January, that is right.

Mr. FISH. That was '75.

Mr. McGIRL. That is right.

Mr. O'BRADY. It was a short time after that, then, you went out for St. Patrick's Day, which is March.

Mr. FISH. So he was kept on remand.

Mr. O'BRADY. No, no, it was internment.

Mr. FISH. Oh, internment in those days, that is right.

Mr. CLINE. What was the purpose of the arrest? Why was he arrested?

Mr. McGIRL. It was on Easter Sunday, and I was arrested on my way to the graveyard.

Mr. CLINE. Arrested on your way to the graveyard?

Mr. O'BRADY. It is the equivalent of your Memorial Day, the anniversary—

Mr. FISH. Until we know more, it would appear that in this, in the case of John McGirl, that his visa was revoked, and the only incident we had there was the arrest and the internment in Long Kesh as the grounds for it.

Was there any prior arrest record?

Mr. McGIRL. Oh, yes, go back 39 years. I was convicted before military courts.

Mr. FISH. Military court.

Mr. McGIRL. I was interned north and south, et cetera. In that period I have been in the political field and have been very active and openly a member of the Leitrim County Council.

Mr. FISH. So for 39 years, you have had evidently a history of being arrested for political activities, and yet at some point a visa was issued to you.

Mr. McGIRL. That is right.

Mr. FISH. And that was issued to you, you believe, in 1974 or '75, following your release from Long Kesh?

Mr. McGIRL. '74 it was issued.

Mr. FISH. So it was apparently known at that time with a record like that. It would appear a policy was made subsequent to that sometime in 1975, on which the revocation was based.

Mr. FISH. Let me see if there is any correlation here. Mr. O'Brady went to the United States in '72, '77, twice in '77, once in '78?

Mr. O'BRADY. No, those are the re-applications. I went twice in '72 and twice in '73. It was revoked in '74.

Mr. FISH. Oh, that is interesting. Okay, revoked in '74.

Mr. O'BRADY. That is wrong there, that document is wrong I believe.

Mr. FISH. Yes, I can see that. Tell me, just back up a minute while we have got you all here and talking about this subject; the case of Mr. Cahill, we said the revocation in your case was '71.

Mr. CAHILL. It was issued in 1970.

Mr. O'BRADY. In other words, Joe Cahill's visa was revoked before mine was granted. Mine was revoked before John McGill's was granted.

Mr. O'BRADY. There is nothing very consistent there.

Mr. FISH. No.

Happy Anniversary to you. [Laughter]

Mr. MCGILL. No, but I was somewhat amazed at being turned down for the fact that Leitrim Organization invited me out there as a member of the Leitrim County Council and when I returned that it was revoked. I never could understand why. They have invited me out a number of times since. I didn't go to the trouble of applying because I felt that I wouldn't get to America.

Mr. O'BRADY. I think Mr. McGill is a bit modest about certain things that should go in the record. The fact is in 1957 he was elected Senior Deputy for Sligo-Leitrim as a member of Parliament; he was elected first for five seats. In 1960, he was elected a member of Leitrim County Council and remained that until 1967 and was re-elected again in 1974 to date. I think those things should be in the record.

Mr. MCGILL. And I have never appeared before a court.

Mr. CLINE. What about Jimmy Drumm? How old is he now?

Mr. O'BRADY. I don't know his age exactly, but he is not young, more than any of us are very young. He has actually spent something in excess of 12 years in prison but has never appeared in court. In other words, he has been subject to internment on successive occasions in the 1930's, in the 1940's, in the 1950's and 1960's and again in the 1970's.

Mr. FISH. What were the reasons for this?

Mr. O'BRADY. They don't give any reason.

Mr. FISH. No, but were these military tribunals?

Mr. O'BRADY. No, no. Internment.

Mr. FISH. Internment?

Mr. O'BRADY. Yes, internment. No trial. It is by ministerial order.

Mr. FISH. We are talking about who now?

Mr. O'BRADY. Jimmy.

Mr. FISH. And this was done in Northern Ireland?

Mr. O'BRADY. Yes. And Keenan is in exactly in the same position. He is a man over sixty years of age who has again spent more than 12 years in prison and has never appeared in court and he, too, has been interned without trial in the North of Ireland right through from 1938 up to 1972 on different occasions.

Mr. FISH. Were either of these people members of Sinn Fein?

Mr. O'BRADY. They are members of Sinn Fein.

Mr. FISH. And they were at the time of their internment?

Mr. O'BRADY. They would be, but I was only a child when some of these things happened here to appreciate that in 1938. But as long as I've known them, that is from about 1950 on, they have been members of Sinn Fein.

Mr. FISH. At the time of their internment in Northern Ireland, was it the Home Office policy to intern people merely for membership in Sinn Fein in Northern Ireland?

Mr. O'BRADY. They would intern people—they would not give them a reason—there is a formula which says they are of opinion as to something or other. It is on record. So, they just take you in and serve you with this notice and they keep you as long as they want. And that has been the procedure.

These men have been extreme cases in point of the operation of this policy.

Mr. FISH. In the case of either Mr. Keenan or Mr. Drumm do you happen to know whether just prior to their internment in Northern Ireland they were active in paramilitary operations against the Crown?

Mr. O'BRADY. I really know nothing of that at all.

Mr. FISH. Josh, the two people that aren't here, Mr. Drumm and Mr. Keenan, are interesting—they differ here because their record was a matter of internment under the old policy in Northern Ireland for several years, one of them up to 12 years. I think you said.

Mr. O'BRADY. Both.

Mr. FISH. Oh, both for 12 years. That is the situation on the order of the Home Office.

Mr. EILBERG. Well, we are hoping to hear from both of those gentlemen before the night is out.

Mr. FISH. We hope they will be calling us before the night is out.

Mr. O'BRADY. I would mention, of course, that Mr. Drumm's wife, Mrs. Moira Drumm was also refused a visa.

Mr. FISH. Right.

Mr. O'BRADY. She, of course, has been assassinated while a patient in the Martyr Hospital in Belfast.

Mr. EILBERG. May I just interject that we have heard about that and we would like to have your information as to who was responsible for her assassination? What were the facts?

Mr. O'BRADY. Well, the facts just sort of appeared in the papers and that is that men came in dressed in white garments as doctors and they just took out guns and shot her dead and wounded another patient in the ward. We suspect that it is part of the undercover operations of the British Army because she was highly critical publicly of the British presence in Ireland and particularly the presence of the British army. And she had appeared many times on television in Northern Ireland and on radio and, in fact, on one occasion, she was named by Mr. Merlyn Reese. In fact, it could be said that he fingered her for the assassination squad. Because there was an action in South Armagh—I think it was November of 1975—in which three British soldiers were killed and Mr. Merlyn Reese, then Northern Secretary, went on the media and said, "I don't know anyone that would be pleased with this except Mrs. Moira Drumm" Which to say the least was a highly unusual statement.

Within the year she was assassinated.

Mr. EILBERG. What year was she assassinated, do you remember?

Mr. O'BRADY. Yes, I do very well, it was the 28th of October, 1976. That was eleven months following Mr. Reese's remarks about her.

Mr. REGIS. Had she applied for a visa based on medical grounds at one time?

Mr. O'BRADY. Yes. In fact, she had a history of ill health and had retired from being Vice President of Sinn Fein ten days before her assassination on the grounds of ill health. She was in a hospital in Belfast undergoing tests and she was to come to Dublin.

Mr. REGIS. And she had no operation for cataracts?

Mr. O'BRADY. No, but she had lost the sight of one eye and I think she was having trouble with the second eye. This was part of her difficulties. I think she had other organic trouble as well.

Mr. REGIS. Was there a doctor in the States that said that he could probably operate on her?

Mr. O'BRADY. Well, that is quite possible and if you are speaking to her husband on the telephone, it would be better to ask him about that because it would be a family matter, but I think that generally—I am just telling you what I know.

Mr. CAHILL. About Mrs. Drumm again, there was a nasty story put out, I assume from London, that the IRA felt that she was no longer useful and that she was an embarrassment and this may have been the reason that she was assassinated.

Mr. O'BRADY. Well, we have heard all kinds of things said about Sinn Fein in this room and Moira Drumm was a member of the Sinn Fein, that is the National Executive from 1970 until her death in 1976. From 1972 until 1976, she was one of the two vice presidents. Now, that meant that she worked very closely with me as president and I knew her extremely well. I used to make jokes sometimes and say that she was my political wife. So, when that kind of thing is said it is so objectionable that it is—Moira Drumm was a good Irish Republican until the moment she died and the people who killed her did so in the interest of British rule in Ireland because she was a vocal, outspoken political opponent of British rule and as such she ruffled many feathers and that is perhaps the reason why Mr. Merlyn Reese named her in the manner in which he did.

But we are quite familiar with this. When the Lord Mayor of Cork, when he was murdered in 1920 by the Black and Tans the British media put out the story that the Sinn Fein extremists had killed him.

Mr. EILBERG. For the record that we maintain, what was Mr. Reese's title when he made that statement?

Mr. O'BRADY. He was British Secretary of State for Northern Ireland. This is the only official title and the remark was made in late November 1975.

Mr. EILBERG. What is your full name, sir?

Mr. O'CONNELL. David O'Connell. I had a passport taken in 1970 and that expired in 1975. I was in the States on two occasions. First, in 1970 and secondly in 1971. But I had no problem whatsoever. Since my passport expired—so I intend to re-apply for a passport and also apply to the U.S. Embassy for a visa and I hope very much that this will be granted.

Mr. CLINE. What will be the purpose of your visit?

Mr. O'CONNELL. Well, it could be that there were times that I have had invitations to go to the States to speak of the Irish situation. It could be for family reasons. I have relatives in the States. I have a brother living there at the moment.

Mr. CLINE. A brother? Where does your brother live?

Mr. O'CONNELL. In New York.

Mr. CLINE. What is his status in the States?

Mr. O'CONNELL. He is a U.S. citizen. He went through the army period and so forth.

Mr. EILBERG. Are you a member of the Sinn Fein?

Mr. O'CONNELL. Yes, I am one of the Vice Presidents of Sinn Fein.

Mr. EILBERG. And is that known by the Embassy?

Mr. O'CONNELL. I would think so that they would be aware of that fact in my political role there has been a fair degree of publicity and I would think the American Embassy would be aware of that fact. I am also in the position of being convicted before a special court on a membership charge first in July 1975. The only evidence tendered against me was the police officers opinion.

Mr. EILBERG. Was this a military court?

Mr. O'CONNELL. No, it is a non-jury court. It is staffed by civilian judges and when I challenged the evidence of the superintendent, he claimed privilege and refused to give grounds upon which he had based his belief as to his opinion.

I was out—I completed that sentence.

Mr. EILBERG. How long did you serve?

Mr. O'CONNELL. Nine months on that occasion.

Mr. EILBERG. Where? What prison?

Mr. O'CONNELL. In Porteliscia Prison. I was released in April of '76 and in July of the same year I was re-arrested and charged—brought before the court on the same exact charge with the exact same police officer expressing the same opinion. On that occasion, I was sentenced to 18 months.

Mr. EILBERG. Did you serve 18 months.

Mr. O'CONNELL. I did. I completed, well, 15 months of the sentence.

Mr. CLINE. Where did you serve this time?

Mr. O'CONNELL. In Porteliscia Prison.

Mr. EILBERG. He was sentenced twice in a one man civil court on the same testimony of the same officer in both arrests. The first conviction he served nine months; the second, 15 of an 18 month sentence. And the officer refused to reveal where the information came from. He claimed his right of privilege which apparently exists under British law.

Mr. CLINE. This is the way that it works under this system. They can deny to give you the source of their information.

Mr. O'CONNELL. Oh, yes. In my case, because it was a lengthy cross examination and the superintendent stated that he believed that I was a member of a certain organization. Now, I asked him to state grounds for that belief. He claimed privilege. There was a long hassle then. The court sat and adjudicated and the court upheld his claim to privilege. In fact, in every case where a police officer's evidence has been challenged and claims privilege, the court upholds his claim to privilege. So, I was up against a stone wall as regards rebutting the evidence.

Mr. EILBERG. And there is no appeal you can make?

Mr. O'CONNELL. One can appeal against it to a higher court which was utterly futile to do it. When an appeal was taken, the superior court upheld the claim to privilege, so that was useless.

Mr. EILBERG. This kind of privilege is unknown in our American system. That is why we are so surprised to hear about it.

Mr. O'CONNELL. Well, we had a group of American lawyers in on one of the sessions of the special court and, in fact, one of them gave a press statement after it and remarked at that very point, that he was astounded to hear a police officer express a belief and then when he was challenged to give the grounds

for such a belief, he claimed privilege and the judge upheld. Only one point of correction, there are three judges sitting on the bench in the special court.

But it is true that the claim of privilege is upheld in the court here and it leaves the defendant in an impossible situation.

Mr. EILBERG. How could you present a defense that might counterbalance the officer's statement, theoretically as a point of information?

Mr. O'CONNELL. Well, it isn't possible because I established clear-cut facts about my political role and so forth and the superintendent confirmed most of that but the procedure is that one is guilty until proven innocent. It reverses the normal accepted principle of court procedure.

Mr. REGIS. What are your chances of getting a passport?

Mr. O'CONNELL. Oh, there is no problem in getting a passport. We don't have any problems there.

Mr. EILBERG. Mr. McGirl, what is your sister-in-law's name?

Mr. MCGIRL. Mrs. Harris.

Mr. EILBERG. And what is her address? Where does she live?

Mr. MCGIRL. New Town Square.

Mr. EILBERG. New Town Square? That is just outside Philadelphia. It is in Montgomery County. Just outside of my district.

Mr. MCGIRL. Yes?

Mr. EILBERG. I know the location very well.

Mr. CLINE. Mr. Cahill, would you mind telling us why you are celebrating this particular day?

Mr. CAHILL. No, it is tomorrow.

Mr. CLINE. Why are you celebrating tomorrow?

Mr. CAHILL. Well, in many ways it is not a celebration. It is a very sad occasion for me, but in 1942 along with five other people I was arrested and charged with murder. It so happened that a policeman was shot dead in Belfast and the six of us were brought before a court, tried and found guilty. Five of us were reprieved and one man, Tom Williams was his name, he was only a lad of nineteen, and the other five as I say were reprieved and served eight years a piece in prison and were released after that.

Mr. O'BRADY. In 1969, difficulties arose in all Republican organizations including the IRA and including Sinn Fein. There were five grounds for difference that arose. Principally I would say that the reasons were that one section wanted to—as we see it and this is our view—take the Moscow line and we objected to that. This involved certain things like accepting British rule and hoping to democratize it afterwards and so on which we objected to. We could never accept British rule. That meant accepting the Stormont Parliament which we wanted to reject and in a sense we have since seen it go.

Well, the papers then, as a result of these division, the papers said well, there is an official IRA and there is a Provisional IRA and there is an official Sinn Fein and there is a provisional Sinn Fein and an official this and a provisional that and so on and so on and so on.

Now, what has happened, of course, is, the people who were called by the papers "officials" have since called themselves the Workers' Party. So that is that. We are Sinn Fein. Some people would call us Provisional Sinn Fein. That is just that they want to clarify something of years which has now passed.

Similarly, with regard to the IRA and this is public knowledge, the official IRA, as they call themselves or whereas they were called, have faded from the scene completely. They do not exist in any public sense and therefore there is just the IRA. And what people perhaps clarify it for you as the Provisional IRA.

Mr. FISH. So there is a provisional IRA in the Republic as well as in the North?

Mr. O'BRADY. Well, historically, the republican movement and all republican organizations have been throughout the whole country and this antedates the setting of the border and the division of the country. So this in fact the Republican organizations have never accepted the border and they don't confine themselves to either the six counties or the 26 counties.

You will find that the political parties established in Ireland since 1922 are either of the South or of the North, but the older Republican organizations which exist from before the border are of 32 counties, of the whole country. That applies to our organization, Sinn Fein, the IRA, and the various other Republican parties.

Mr. REGIS. Do you put up candidates?

Mr. O'BADY. Yes, I just mentioned here that he is a councilor at the moment and that both of us were deputies at one stage.

Mr. REGIS. But isn't there a faction that boycotts elections?

Mr. O'BADY. Well, that is up to ourselves. Some people do, some people don't and it varies from time to time. We boycotted the constitutional convention which the British set up in 1975 on two grounds; number one, that this convention could not decide anything without having final approval by the British government and we don't accept that the British government has the right to decide what the future of Ireland should be, and secondly, the convention was confined to six counties. It wasn't an all-Ireland and therefore we couldn't accept it. This is something about which we feel very strongly.

Mr. ELBERG. What happened?

Mr. O'BADY. A bilateral truce with Britain terms for both sides. Sinn Fein were asked to act in the middle to monitor the truce and truce incident centers were set up. I think there were six of them and one central one right through the North of Ireland and the British also set up incident centers opposite them to monitor the truce.

During all that, political talks took place between the British government and the Republican movement. Now, as I mentioned, Sinn Fein's job was to monitor the truce and the truce was consistently breached by the British.

There are six people in prison today including Willie Gallagher who were arrested and imprisoned in breach of the written terms and guarantees given by the British government that they would not do this during the truce period. Now, the other side of that coin is that in 1972 during the short truce and in 1975 during the long truce, on both occasions and particularly in 1975 because of the length of time, the response of the loyalist paramilitary organizations was to intensify their assassinations of innocent and uninvolved people whom they believed to be nationalist minded and they would not, during that period, engage in any kind of talks. They have admitted that their policy was to wreck the agreement between the British government and the Republican movement.

Mr. FISH. If you could put aside your political goal at this point of a united Ireland and a free Ireland, and just address the situation in Northern Ireland the way it is today. Do you see a role for the United States that would be positive in any respect right now to try to help towards a resolution?

Mr. O'BADY. Yes, I think that the United States government in pursuit of its declared policies of upholding human rights anywhere in the world should seek to have human rights upheld in Ireland and the violations of human rights in our analysis come from British rule. The British rule is not able to maintain itself in Ireland without violating human rights because their rule does not rest on the consent of the people.

They are there in violation of the will of the people of all Ireland and we would like to see—Sinn Fein would like to see the United States government and all interested people in the United States and everywhere pressurizing and influencing the British government to scale down its operation in Ireland and eventually to quit Ireland for good.

And we believe that that is the greatest possible contribution that could be made towards peace and towards stability and towards making Ireland a normal country.

Mr. FISH. Finally, you have recounted to us examples of the judicial system in the Republic and I was wondering if you could tell us if you feel that there are violations of human rights going on today in the Republic of Ireland?

Mr. O'BADY. Yes, I do most certainly. I put many of these on record when I was last in Washington before the Committee under the chairmanship of Congressman Fraser and I said then and I say now that the violations of human rights south of the border are the overspill from the situation in the North of Ireland. So that British rule is not alone dominating life north of the border, but it is also poisoning relationship south of the border as well.

Mr. FISH. Well, why is that? Why is Dublin seemingly so responsive to London?

Mr. O'BADY. Well, this has been historically the way. If you like and you should understand this as political people, they have a vested interest in the status quo. Their political organizations do not extend to the whole country, just to the southern part. They fear new political arrangements in Ireland. They fear a new kind of politics. They fear all-Ireland institutions because they feel their political fortunes would suffer in that type of shakeup. They have a comfortable

enough situation here. There is one party in office. Last year, there were two opposition parties and they hope for a change around.

Now, why disturb all of this by having a million and a half people which is an addition of 50 percent in population: three million people in the South, a million and a half in the North. Why upset all of this? Why not nail down the status quo and keep it that way?

That is political people who are in power and want to stay in power or who have the prospect of power and they feel that all this kind of thing is going to jeopardize that and so their consistent role since 1922, since the Southern states have been established, has been to collaborate fully with the British policies.

So, the violation of the human rights in the South of Ireland result from the British presence in the North of Ireland and the supportive role of the Dublin government with regard to that presence.

Mr. FISH. Thank you very much.—(Later.)

Mr. CLINE. We are in Hotel Shelbourne, Dublin with Joe Stagg. Welcome, Mr. Stagg.

Mr. STAGG. Thank you. Well, in October, 1977 I applied to the U.S. Consulate in Dublin for a visa to visit the United States from the period the seventh to the 22nd of October in that year for the purpose of visiting friends and relatives in the United States. On the third of October I was called to the American Embassy by Counselor Paul B. McCarthy who interviewed me and indicated to me that he understood that there was a Committee in America raising funds for a memorial to people who died in hunger strike in the County of Mayo; three people, one of whom was my brother, and that he understood from some information available to him that I was going out there solely for the purpose of raising funds for this memorial.

I indicated to him that my original reason for going to America was to go on holiday. I originally applied for my visa on the ninth of August, and that in the interim people had indicated to me in America that they had discovered I was going there and that they would be holding social occasions indicating to the Irish-American public in New York, in particular, the fact that such a memorial was being raised to these three men who died on hunger strike in the cause of Irish freedom as they understood it.

I was asked to appear as a guest. I indicated this to Mr. McCarthy that this was my intention when they discovered I was going to America to visit friends and relatives and when I was there and when such an occasion was being held, I would go there and be present as a guest.

He, first of all, asked me, "That is fine but you must not speak." So I pointed out to him that if he was going to place that embargo upon me, I would be an embarrassment really to the American government because I would have to indicate to the press, who are present, I am sorry I can't speak. So he deferred to that. He waived that issue. And he eventually laid only one condition. And that was that I would not ask for money which undertaking I gave.

He then asked me to sign this document which reads, "This is to certify that, I, Joseph Henry Stagg, born October 24, 1928 at Hollymount, County Mayo, Ireland intends solely to visit relatives and friends in the United States for approximately two weeks beginning October the 7th, 1977. I further certify that it is not my intention to raise funds for NORAD or other organizations affiliated with provisional IRA and Sinn Fein movement during the course of this trip or any subsequent visit I may make to the United States with my multiple entry visitor's visa."

I hold the view that I honored that statement that I swore in the presence of Counselor McCarthy. And to prove the point I would like to play you a very small section of a tape of some of the speeches that I made at the functions where I indicated to the people in the various places that I was not, in fact, asking for money. Now.

(Tape) "I was recalled to the Dublin Embassy of the United States three days before I come here. And they said to me we believe we have information that you are going to the United States to raise money to build a monument to your brother. And I pointed out to them that as I understood it there was no reason for anybody to be prohibited from coming to the United States unless they were going to raise money for guns, bonds, or bonnets or so what. I informed them that in any case I was not coming to raise money for my brother. I was coming out here on a holiday and as it so happens some people at the same time were

having functions around and they were asking me, very kindly asking me to attend as a guest of honor.

And I said is the great liberal American nation asking me not to go to a function, not to respond to a request to go to a function as a guest that is honoring the dead. They hemmed and they hawed and eventually they said, okay, you go but you don't ask for any money.

And I am not going to ask you for any money. I am not going to insult your intelligence. I have no intention of doing that because there was no need to attempt to defend the Irish Cause over the past 200 years since people began to come out of this country in the common ships, not in jumbo jets; since their bones were buried in California, 6,000 miles away from home at the time of the famine, the Irish Americans have never reneged. And no American consul had any need to tell me not to be asking them for money. I am not going to insult you."

MR. CLINE. You make a great speech.

MR. STAGG. Well, that was among other things. I also spoke on these occasions as Chairman of the Irish Civil Rights Association. I indicated to the Irish Americans who were present at these occasions the need for the reestablishment of Civil Rights in Ireland in relation to torture in both parts of Ireland by the authorities in the North of Ireland and by the authorities in the South.

I indicated to the people in America how the Irish governments in the South of Ireland were not doing their duty by the people of the North of Ireland by not taking sufficient interest in their problems, et cetera, et cetera. I, on no occasion would ever, indeed, advocate that any money from America—and I want this to go on all official records—be sent to Ireland for the purpose of purchasing arms. And I certainly did not nor never would advocate that arms in themselves would be transported to Ireland for the purposes of waging any kind of war.

When I returned home there was not any reaction from the American Consulate. But I was invited to go to America again in February and prior to my going out, one week prior to my going out, my visa was cancelled and these documents were sent to me by Mr. McCarthy.

MR. CLINE. Would you mind telling us the purpose of your second intention of going to America.

MR. STAGG. My second intention was to go again as Chairman of Irish Civil Rights Association. On this occasion, solely as Chairman of Irish Civil Rights Association because the question of the monument thing was now passed. And I wanted to re-establish and reaffirm to the Irish-Americans the need for Civil Rights in Ireland.

I also wanted to indicate to them that the Irish Civil Rights Association felt that there should not be any American investment in Ireland at an official level. As we, in the Civil Rights Association, would feel that this would be the beginning of taking over Ireland into a new empire after it had come out of an old one.

I was very emphatic on that and I made it quite clear in public and in private before I went that this would be the line that I would be taking. Ban American investment. We have sufficient natural resources in this country to develop our own country. The money is here. It is in the banks. It is in the pubs. It is in the race courses. It is coming to 10 percent of the community out of the EEC, et cetera, et cetera. And I see American investment as a means of establishing bases on our coastline for to use in any further warfare that may develop between East and West, given the geographical situation that we hold in the world.

I made it quite clear to people that I had met that I would be taking this line as Chairman of the Irish Civil Rights Association in going to America. One way or the other my visa was withdrawn for the reasons stated here by Mr. McCarthy. Would you like to have them on tape, or would you like to read them?

MR. EILBERG. No, the section numbers, Section 212(a)27, Section 212(a)28(f), and Section 212(a)19.

MR. STAGG. Now, that is my story. My wife's case is even, if I may say so, more vile because here was a lady that was not involved in any way in public life in Ireland, whatsoever; never had any problem with the police in any way. And this is her statement. She was to come with me on the second occasion.

MR. EILBERG. What is your wife's full name?

MR. STAGG. Mary Stagg. "I mailed a completed application form for a visa on the 20th of January. I received no communication from the Embassy. I was away from home from the third to the ninth of February. On my return on Thursday the ninth, I was surprised that my visa had not arrived or neither had there

been any communication either by telephone or otherwise from the Embassy, bearing in mind that we were due to go out on the 11th.

I immediately telephoned the Embassy to be told by a member of the staff that my application had been received, but that a member of the consulate would have to speak to me. I explained that I was booked to travel to New York on Saturday morning and time was very short and if it was possible to go in for an interview then on the Thursday, on that afternoon.

I was told that this was impossible or unnecessary as a telephone call was sufficient and that the member of the consulate who wished to speak to me was not available then and wouldn't be available until 3:00 o'clock on the Friday afternoon. I asked why the Embassy had not communicated with me as the application form states that you will be communicated with pretty quickly in the event that there would be any question about your visa. The speaker told me she didn't know why.

I telephoned the Embassy on Friday at 3:00 P.M. I was put through to a lady in the Embassy. She informed me that I would have to come in for an interview. Being a housewife I explained to her that this was absolutely impossible at 3:00 P.M. of a Friday afternoon, bearing in mind that I was planning on going to America on the following morning, and that I would have to cancel my flight to New York for the following morning. She said she was sorry. I asked her why I was not telephoned. She again said she was sorry—period—full stop.

I told her I had gone through a lot of upset making arrangements for my visit as well as a lot of expense. Once again she said she was sorry.

On Monday the 13th—now this was after the flight had gone, after the arrangements and all that were cancelled—I went into the Embassy and was interviewed by a lady. First of all she informed me that my application form had been mislaid and that this was the reason I wasn't telephoned. She then asked me if I intended raising funds for any illegal organization while in the U.S. I asked why I was being asked this question. She informed me there was a likelihood of this because my husband, Joe Stagg, had had his visa revoked for this reason the week before.

I told her I had applied for a visa as an individual and I felt I should be treated as such. But now I found because I was married to Joe Stagg and used my married name on my application form I was called in for an interview and asked this question. To me this was discrimination. And, therefore, I refused to answer the question.

On February the 22nd I received a letter, copy enclosed—this went to all the people in America—refusing my visa. My passport was also returned. On looking through my passport I found that, in fact, an unlimited time visa had been granted to me on the 31st of January and later cancelled. This proved to me that I had been misinformed by the Embassy which stated that my application form had been mislaid.

Now, I have got the passport with me with the cancellation and while the word cancelled runs across the 31st of January, January is quite clear for everybody to see. And the 31st being the last day of the month of January that is an irrelevancy."

So there was misinformation, deliberate misinformation given by the American Embassy to my wife regarding the mislaying of her passport. That in which I think is absolutely proved. Well, that is my statement, gentlemen.

Mr. EILBERG. Do you have any plans for the future, that is to try again?

Mr. STAGG. Not really, I feel that I have banged my head against an American stone wall with varied results. I have got some publicity about it in the Irish papers. Perhaps when better times and better men on both sides of the Atlantic are in power I may try again for a visa, but not at the moment. I would feel it would be futile.

Mr. EILBERG. Once again the purposes of the Civil Rights Association are what?

Mr. STAGG. It is a non-political, non-sectarian association. We have run into trouble in recent times with provisional Sinn Fein because we have had reason to criticize them for the manner in which they have treated their own prisoners. And that in itself I would imagine would be proof of the fact that we are non-sectarian.

I am personally, at this moment in time, persona non grata, officially, with Provisional Sinn Fein. We look to all sections of the community to come to us with their grievances regarding the State. We will treat these applications as they come. And our one basic rule is we do not ask why they come to us with their complaints against the State nor do we ask what these people have done in the past.

Mr. EILBERG. Mr. Stagg, in the letter of February 10th from the Embassy here, signed by Paul McCarthy and the sections referred to our U.S. Immigration Nationality Act, I am showing you the sections referred to and I wonder if you would comment on them. In your opinion are you in violation or do you come within any of these sections?

Mr. STAGG. No, I certainly do not. I do not advocate or teach—it says here aliens who advocate or teach or who are members of or affiliated with any organization that advocates or teaches the overthrow by force, violence, or other unconstitutional means of the Government of the United States—certainly not. Under no circumstances have I ever said anything that would remotely convey anything of that nature, of the unlawful assaulting or killing of any officer or officers, totally are irrelevant. I mean I was—I never even touched on anything like that either in my speeches or in my thinking anywhere.

Mr. EILBERG. Are you or have you recently been a member of Sinn Fein or the provisional Sinn Fein or any other, let us say, political organization?

Mr. STAGG. In all of my life I have shied away from organizations of any kind. And I have never in my life been involved in any organization other than the Irish Civil Rights Association. And I only did that when I saw a total denial of Civil Rights in this country to everybody, North and South.

Mr. EILBERG. And you have not been a member of any paramilitary group—

Mr. STAGG. Never.

Mr. EILBERG. —engaged in any violence or belonged to any organization that deals in violence.

Mr. STAGG. Most certainly not.

Mr. CLINE. That is very clear and I like your pin. What does that say?

Mr. STAGG. It says "Free all Irish political prisoners." And by all I mean, loyalist prisoners as well as republicans because until they let them out there obviously won't be any peace in the country. It is a condition of peace.

Mr. CLINE. Mr. Stagg, thank you very much for your story.

Mr. STAGG. You are most welcome and thank you very much for having me here.

E. NON-IMMIGRANT VISAS ISSUED TO LOYALIST PARA-MILITARY MEMBER

In its meeting at the U.S. Embassy in London with Counselor of Embassy for Consular Affairs Norman Redden and U.S. Consul General in Belfast, Charles R. Stout on August 28, 1978, the question was raised on the policy adhered to by the Department of State in issuing visas to members of the Loyalist para-military organizations. The delegation did learn that in fact non-immigrant visas were issued to various members of these organizations.

The following communications refer to this question :

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP AND INTERNATIONAL LAW OF THE COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., August 25, 1978.

To: Honorable Joshua Eilberg, Honorable Hamilton Fish, Jr.

From: Peter Regis.

Re: Visas Issued to Individuals Allegedly Involved With Protestant Paramilitary Organizations in North Ireland.

The attached letter in the Subcommittee files seems to indicate that visitors visas were issued to members of the Ulster Defense Association and Ulster Volunteer Force, both Protestant paramilitary organizations.

The Visa Office was asked to check their files to substantiate or refute the report.

The Visa Office informed us that there is no record on any of these visas which seems to indicate that visas may have been issued to these persons. No record is kept on visas issued, only those denied.

Issuing posts are only required to maintain records on visas issued for only one year after which they are destroyed.

A cable is being sent to Belfast with information copies to Dublin and London asking the Consular office to search their files for any information on these individuals.

They will have a report on arrival in London or Belfast.

SEPTEMBER 3, 1975.

HON. JOSHUA EILBERG,

Chairman, Subcommittee on Immigration, House Judiciary Committee, Rayburn Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I am writing to advise you of the most recent developments with regard to the revocation of Irish visas.

The following is a partial list of individuals who have been granted visas to enter this country in the past few weeks:

Tommy Little, member of Ulster Defense Association; Andy Robinson, Ulster Defense Association; Andy Tyrie, Ulster Defense Association; Ken Gibson, Ulster Volunteer Force; Hugh Smith, Ulster Volunteer Force; William Mitchell, Ulster Volunteer Force.

These groups are known to all to be "paramilitary" organizations. Further, they did not only "threaten" to overthrow an established government (which is the reason given for the denial of other visas), but actually "brought down" the "established" government in northern Ireland last year.

I want to be very clear. I have no objection to their entry into this country. My objection is just the opposite—I strongly oppose the revocation of *any* Irish visa for "political" purposes and that, quite obviously, is what is being done.

Considering the statements of the State Department on the revocation of other Irish visas—then granting the above—certainly points up how unjust they have been and are being. It also points out the need for an immediate Congressional inquiry into the actions of that Department.

I sincerely hope this information will strengthen your position in demanding a reversal of the State Department's decision on the revocation of other Irish visas and I also hope we can count on your strong support.

Sincerely,

BERNADETTE O'REILLY,
Irish-America Club—Washington, D.C.

CHAPTER II.—THE WILLIE GALLAGHER CASE

When the delegation arrived in Belfast on Monday, August 28, 1978, it was immediately approached by Brendan Gallagher, the father of a Long Kesh inmate, Willie, who was then on his 48th day of a hunger strike. Brendan Gallagher had been pursuing an active campaign to secure a re-trial of his son's conviction. His major concern in approaching the delegation on this day was to garner its assistance in providing an atmosphere of reassurance to his son so that he could discontinue his hunger strike. The father had just visited his son that day and had come away convinced that his son's life was in serious jeopardy.

The following newspaper account traces the Willie Gallagher case from its beginning:

March 4, 1958, Josephine Gallagher gave birth to a baby boy in a hospital in Manchester.

She had been married two years to Brendan Gallagher and this was their first child. He was christened William, a traditional name in the family.

At that time, Brendan, a native of Co. Donegal, was serving in England with the Royal Artillery. But when Willie was five, the family decided to return to his mother's home town of Strabane.

They moved into a house in Gartan Avenue on the Ballycolman estate, high above the town overlooking the Mourne river and Lifford, less than two miles away in Donegal.

Young Gallagher went to St. Mary's Boys' Primary School, and by the time he was 10 had proved himself a bright pupil. His best subjects were art and mathematics and already there were hopes that one day he would go to university.

But by now the shadow of "the troubles" began to fall across the land; it did not cross the boy's path for another four years although, in the interim, Ballycolman estate was increasingly subject to the influence of the IRA.

His first brush with the police came after a holiday in England where he had gone with his grandparents to see friends who were stationed with the Army at Colchester.

According to his father: "When he came home, Willie was taken in by the police and I was told that they believed he had acted as a lookout for gunmen in an attack on the sentry post at the border check.

"This incident happened when Willie was in England and we had proof that when the shooting took place he had been in the Army barracks. He was released but a few days later the Army raided our home and took him away. He was released in the afternoon and we sent him to school.

"That afternoon he could not write and complained of having a sore hand. He was taken to Altnagelvin hospital where we found out that he had a broken bone. Later he told us that a soldier stood on his hand while he had been in the back of a Saracen."

Brendan Gallagher does not hesitate to admit that his son was caught up in the web of the men of violence but he is highly critical of the circumstances that led to his involvement.

"Willie had to prove himself in the community," he says. "At that time there was a great deal of pressure put on young people by the Provisional IRA and by other young people.

"And there were members of the security forces who did not help matters. Willie wasn't the only young lad to be pushed around. This didn't lead to respect from the young ones."

The web caught Willie Gallagher in its strands in two years.

"There was very little in Strabane for young people," says his mother. "They had to make their own enjoyment. The young people will tell you that there is still very little for them to do but there is an awful lot more now than there was then."

Sunday, March 3, 1974—the day before his birthday—was the turning point for Gallagher.

According to his father:

"For three weeks a rifle had been lying in the estate. Nearly everyone knew about it and parents had told their children not to go near it, touch it or even to talk about it.

"That Sunday a certain policeman who was stationed in Strabane and who had a reputation for knocking young lads about stopped Willie in the town.

"He asked him a few questions and dragged him across a road by the hair. At that time news travelled fast in Strabane and certain people heard what had happened.

"Later, two masked men approached Willie in the estate and told him to move the gun.

"I won't deny that at this time Willie felt very bitter and he was also scared of what could happen if he didn't obey.

"He was caught with the gun hidden down the leg of his trousers and was taken to Londonderry for questioning.

"The gun was an old .303 and Willie also had two bullets on him—a .303 and one for an SLR. In the barracks both bullets were set up and he was told to pick out the one that would fit the gun. He picked the wrong one."

When Gallagher's parents were told what had happened to him they set off for Londonderry.

"When we returned home we found that the Army had broken into the house, ransacked it and stole some things," says his father. "They stole £24 in cash and it took over four years before I could get the case into court.

"I was eventually awarded £30 by the court but with what had been stolen and what had been broken I had lost much more."

Gallagher, was taken to St. Patrick's Training School in Belfast.

A week after being caught with the rifle hidden in his trousers he slipped away from the training school, where he was sent on remand. He went on the run from the law for the first time.

On Sunday, March 10, Gallagher's parents were sitting in the Inter-Counties Hotel in Lifford.

"I forget who it was now," says his father, "but we were sitting having a quiet drink when someone came in and told us they had seen Willie in Omagh.

"I realised immediately what had happened and I knew that if the police caught him first, then things would be much tougher on him. I went to Omagh and eventually found Willie.

"All the way back to Strabane I was worried sick in case the police or Army stopped us. I knew in the back of my mind they would never believe that I had gone to Omagh to look for Willie and that it had not been prearranged. Things would have been bad for both of us.

"Outside Strabane, the worst happened—the Army stopped us at a checkpoint.

"Willie was taken into custody and was taken first of all to the Crumlin Road before being transferred to St. Patrick's Training School."

He was later given bail but absconded again and fled to the Republic, staying with friends in Lifford.

As the crow flies, he was no more than a mile and a half from his parents' home. He could stand behind the customs post in Lifford and look along a short stretch of road to where a hump-backed bridge concealed an Army post.

Although a border stood between Gallagher and his home the links with Strabane were far from severed.

Friends and family in Strabane were able to visit him with little difficulty and he was only a few miles from relatives who still live in Donegal.

But although he could stand in the town and look across the river and up to the Ballycolman housing estate he could not go home without attracting attention.

Brendan Gallagher maintains that his son left Lifford and traveled to Limerick in search of work which was in short supply in Donegal and he is adamant that the son was in Limerick when the British Legion Hall in Strabane was bombed on January 21, 1975.

A whist drive was being held in the club when two men walked in and planted a bomb. One was masked, the other was not.

About 45 minutes later part of the bomb went off. Damage was confined and no one was injured.

It was to be over a year and a half before Gallagher appeared in court and was convicted of the Legion Hall bombing—during which time he was re-arrested and convicted of possession of the .303 rifle and ammunition.

Nearly three months after the explosion at the British Legion Hall he arrived at his parents' home in the Ballycolman estate.

"He knew he was taking a risk by coming back," says Brendan Gallagher, "but he had travelled to Lifford in search of work and couldn't find any. Money was short and Willie couldn't stay away any longer.

"He signed on the Labour Exchange and started to draw dole money.

"Early in April, 1975, the police arrived at the Labour Exchange to arrest Willie but he managed to slip away through a hole in the fence. On April 23 they returned and took him into custody."

Later he was convicted and sentenced to three years for possession of the .303, and two years, to run concurrently, for possession of the ammunition.

But a year was to elapse before he would be charged with the Legion Hall bombing, although he was questioned about the blast when he was re-arrested on the arms charge.

Two years of campaigning have taken their toll on Brendan Gallagher.

"I have been fighting for two years now and it is only recently that Willie's case has drawn support," he said. "I'll admit that there have been times when I have felt so tired and so depressed that I just broke down.

"I remember the time when Willie went on hunger strike . . . I honestly believed it was the end."

Brendan Gallagher was sitting in the lounge of the Inter Counties Hotel in Lifford on Thursday, July 13, when his wife broke the news of the hunger strike.

"I had been in England at the week-end when Willie went on hunger strike and I knew nothing about it until the Thursday night," he said. "I had talked with several MPs and I was hoping they would raise the matter in Westminster.

"Willie went on hunger strike on the Tuesday and although Josephine knew about it in a letter, she received from him she didn't tell me until the Thursday night because I had already been feeling depressed.

"I just broke down and cried," he says. "I couldn't even get a word out of my throat, everything spun and I just felt so low."

Shortly afterwards, he read the letter from his son—a letter which made no reference to the campaign for a re-trial but to a personal campaign for restoration of his political status.

"I went on hunger strike today, July 11, for status," wrote Gallagher. "It all started on Sunday when we moved from H1 to H2. I was picked out for special treatment. Before, I never really believed I was being victimised. Now I do."

He concluded his letter with the words: "It seems as if this will be a long one this time. But I'm prepared to go the whole way this time." (See page 40).

But he didn't go the whole way. After 48 days without food, Gallagher was persuaded to give up. It was after the BBC screened the play based on his trial, after two American Congressmen added their voices to those calling for a re-trial and after much persuasion by relatives.

"It took a long time before we were able to convince him that his death would do nothing to clear his name of the bombing or even to give him back political status," says his father.

When he was sent to the Maze Gallagher was eligible for political status because of the dates of the offences, for which he was convicted. He was accepted into one of the compounds held by the IRSP.

Late last year there was friction in the compounds and he was one of a number of prisoners to relinquish political status and move to cells in the recently-constructed H blocks.

Later he attempted to patch his differences with the IRSP and demanded to be returned to the compounds and to have his political status returned.

But the authorities refused. And it was in the wake of this refusal that he stopped taking food.

Throughout the letter he wrote to his parents Gallagher made no reference to a miscarriage of justice" but alleged that he had been beaten by prison staff.

He wrote: "I thought they were going to do me in. It would take too long to mention all the harassment. In other words, I couldn't stick all this and had to go on strike before I got kicked to death."

Asked to explain why the letter made no reference to a re-trial, Brendan Gallagher says: "Willie was not interested in a re-trial. He wanted to be freed because he knew he was innocent. We talked to him and told him that pressure for a re-trial was the only method by which he could be cleared and he reluctantly agreed to it."

"He was down to nearly five stone when he decided to give up the hunger strike. It was the most wonderful news I have ever heard."

"He was so close to death and it took a lot of persuasion from everyone to get him to stop the strike. He is so strong willed a boy that he would have continued until his death."

That strong will was evident in another letter written by Gallagher to his parents after 40 days without food.

"Well, this is now 40 days, he wrote, "and I'm feeling great. It's probably my mental condition which is slowing down the deterioration of my physical condition which is quite good, considering."

As an unemployed father of 11, Brendan Gallagher has time to carry on the campaign but has his share of money problems.

While his son was on hunger strike he travelled to England to try to take the case further. To do this he borrowed £80 and still has not been able to pay it back.

Gallagher was 33 days into his hunger strike before the outside world learned of it. His name hit the headlines. Controversy surrounded the BBC screening of "The Legion Hall Bombing", and there were calls from politicians, organisations such as the National Council for Civil Liberties and the Irish Congress of Trade Unions.

His father says: "I really get hot under the collar when people say that I am being backed by Republican movements. You can ask me as personal a question as you like. I won't be embarrassed because I am telling you only the truth."

"I support civil rights but I have no connections with Republican movements or para-military organisations. If people only know how opposed to terrorism I am."

"I work a lot with young people in Strabane and have seen how easy it is for many of them to get caught up and to be used."

"I couldn't have gone through all this if it wasn't for the support I have from Josephine. When you're doing something like this and despair sets in, then it hits really hard."

"There are times when I just want to lie down and die and there are other times when I feel so angry that I could do something I would be ashamed of."

"And there are other groups hanging on to the tails of this campaign and are trying to use Willie for wrong ends. I have read leaflets that are nothing but sectarian outrages. This is not a sectarian campaign I am fighting. The questions raised about the case concern everyone in this country and even in the rest of Britain."

"There can be very few people who don't know what we are fighting about. One of the Crown witnesses made a positive statement in court that Willie was not the youth who carried the bomb into the building, and as for the alleged statements, they were never read over to him and he was never asked to sign them."

"On top of this, the times about interviews given in the court by police from notes they claimed to have made at the time just didn't correspond with times on record sheets."

"A detective sergeant said in court that the interview started at 2.35, according to his notes, yet records kept by the police showed that I was with Willie between 2.15 and 2.45."

"And then there was the supposed time it took to interview Willie. In court the police admitted they only asked enough questions to last for about ten minutes," he claimed, "not forgetting that it took them a year after the questioning to charge William."

So Brendan Gallagher's campaign goes on. The brunt of his argument rests on the manner of the police interrogation, the acceptability of the verbal statements Gallagher is alleged to have made to police and the long time-lag between the bombing and the eventual trial and conviction. But his contention that his son

was not at the Legion Hall but at a guesthouse in Limerick remains as incapable as ever of being confirmed.

One thing is certain :

Willie Gallagher is paying dearly, like so many other young people, for ever becoming a pawn in the games of war in Ulster.

Gallagher's trial on the Legion Hall bombing opened on September 6, 1976.

His co-accused, Eugene Campbell, refused to recognize the court and pleas of not guilty were entered by the Judge.

Gallagher pleaded not guilty to the three charges he faced :

- Making an explosive substance.
- Causing an explosion.
- Possession of an explosive substance with intent.

The court heard evidence from two witnesses who had been in the British Legion Hall when the bomb had been planted. One said she was not able to identify the bombers and the other said Gallagher was not the unmasked youth who carried the bomb to a corner of the hall.

Gallagher's charges followed an interview at Victoria RUC station in London-derry on April 23, 1975.

Giving evidence to the court about the interview, a detective sergeant said that at first Gallagher denied playing any part in the bombing but that he "heard about it."

The sergeant said Gallagher later admitted : "I did the bombing at the Legion Hall."

Throughout the interview, the court was told, Gallagher gave details of the bombing but refused to make any written statements. The sergeant said Gallagher had claimed he had resigned from the PIRA.

All police giving evidence to the court were questioned closely about notes they produced concerning the interviews with Gallagher.

In his evidence to the court, Gallagher denied making the admissions and claimed the police said they had a witness to identify him as taking part in an armed robbery at a Spar shop.

He claimed no notes were taken during any of the interviews and that he had not been cautioned by police.

Gallagher claimed he had been staying at an Inn in Limerick at the time of the explosion but that he did not think it would be necessary to provide evidence of this to the court.

His father, Brendan Gallagher, told the court he was certain his son had been in Limerick when the explosion occurred.

"I know for a fact he was in Limerick at the time but I cannot prove it," he said. "I could get witnesses to come across and lie about it. I have witnesses in the Free State and it would be easy to do that but I have not done that."

Brendan Gallagher said he went to Limerick and approached the owner of a guest house but that they kept no records and he was unable to provide proof his son stayed there.

Gallagher was sent to prison for 12 years for causing the explosion and 10 years on each of the other two counts.

All sentences would run concurrently.

A. ACTION TAKEN BY THE DELEGATION ON BEHALF OF WILLIE GALLAGHER

In his meeting with the delegation, Brendan Gallagher went into considerable detail about the harassment to which he and his family were being subjected. This harassment was intensified after the Willie Gallagher case became known in England through BBC television and newspaper interest at the time that Willie was in his 30th day of the hunger strike.

According to Brendan Gallagher, he was convinced that his son would give up his hunger strike if he would have assurances that he would not be mistreated by prison personnel when he returned to his cell in Long Kesh. On his 48th day, Willie was down to 80 lbs. from

a normal weight of some 168 lbs. His father was certain that Willie could not survive beyond another 3 or 4 days.

He pleaded with the delegation to intervene on Willie's behalf with British government authorities to secure the assurances Willie was seeking.

In view of the gravity of the situation, the delegation decided that immediate steps had to be taken to save Willie Gallagher's life.

That same evening, the following telegram was sent to Prime Minister Callaghan, Home Secretary Merlyn Rees, Secretary of State for Northern Ireland Roy Mason and Minister of State (Northern Ireland) Don Concannon:

"Today, August 28, 1978, we met Brendan Gallagher of Strabane whose son William Thomas Gallagher is in the 48th day of a hunger strike in Long Kesh Prison, Northern Ireland.

The father believes Gallagher would come off hunger strike if we could guarantee no reprisal would follow his return to health.

For this guarantee we appeal to you on humanitarian grounds.

Our immediate interest in this case is purely to save his life.

We are willing to act as intermediaries in the prison or alternatively suggest Father Denis Faul to assure young Gallagher that he will suffer no reprisal.

We are sure you appreciate immediate attention is necessary due to the boy's physical condition.

We were told Gallagher claims he is innocent and seeks a retrial. We would strongly urge that this be considered.

Congressman JOSHUA EILBERG,

Congressman HAMILTON FISH, Jr."

The text of the message was also telephoned into the office of the Subcommittee on Immigration, Citizenship and International Law in Washington with the request that it be transmitted immediately to Assistant Secretary of State Patricia Derian.

The Consul General also transmitted the message to Washington directed to the personal attention of Ms. Derian.

On the morning of August 29th, Mr. Gallagher informed the delegation by telephone that his son had agreed to call off his hunger strike, having been convinced by the message sent out the evening before.

It is interesting to note that an official announcement by the Northern Ireland Office stated that Gallagher started taking nourishment at lunchtime August 28. It seems extremely unlikely for his father not to know of this development when he met with the delegation late in the evening of August 28.

The text of a Department of State telegram on the Willie Gallagher case is reproduced here reflecting the official Northern Ireland office views on the matter.

B. TELEGRAM FROM THE AMERICAN CONSUL GENERAL, BELFAST

From American Consul, Belfast.

To Secretary of State, Washington, D.C.

Information American Embassy, Dublin.

American Embassy, London.

Subject : Trial of William Gallagher.

1. Codel Eilberg interested.

2. Punishment for Hunger Strike : In a letter dated September 1 and received September 4, a senior official of the Northern Ireland Office (NIO) supplied information on the hunger strike, charges and convictions of William Thomas Gallagher (ref A), as requested by ref B. Copies of the letter and memorandum pouched to Eur/NE and info addresses.

3. The Department asked whether administrative action is taken against prisoners who are on hunger strike: Prison authorities state that the regulations concerned "do not specifically mention going on hunger strike as a disciplinary offence. There is, however, a general provision dealing with willful breaches of the approved prison regime, and it would be possible for a refusal to accept food to be treated as a disciplinary offence in this category."

4. The NIO was also asked whether it was in fact intended to take disciplinary action against Gallagher because of his hunger strike. The congen was informed in reply that "The governor of HM prison the Maze has now considered Gallagher's case and has concluded that no disciplinary action should be taken against him in respect of his recent hunger strike. This decision does not of course preclude the possibility that disciplinary action might be taken against him (for example, though not necessarily, loss of remission) if he were to embark on yet another hunger strike in the future."

(Comment : By "remission" is meant the legal provision in terrorist-related cases for reducing the prisoner's sentence one day for each day of good behavior.)

5. Background of case, charges and conviction : The NIO memorandum on Gallagher's record follows. We add that Gallagher's two trials were conducted by one judge acting without jury under the emergency legislation in terrorist-related cases, whereas the court of criminal appeal, which ruled against him on March 18, 1977 was formed of two senior judges. In addition, in reply to Codel Eilberg's request for a retrial for Gallagher (Belfast 170), a senior NIO official told the Codel August 30 that a retrial could be granted only on the basis of new evidence in the case.

6. NIO memorandum :

Gallagher (together with another youth) was caught in possession of a loaded rifle, by an army patrol, in Strabane on 3 March 1974. He was charged with the offences of (1) possessing a firearm and ammunition with intent and (2) in suspicious circumstances, and was remanded to St. Patrick's Training School. (His age at the time of his arrest being eleven days short of his sixteenth birthday).

On 10 March he absconded from St. Patrick's, but was recaptured within 24 hours, when he was found in a car being driven by his father. (His father, William Brendan Gallagher, was subsequently prosecuted for aiding and abetting his escape from lawful custody and was given a suspended sentence of two years.)

On 23 March, Gallagher junior again escaped from St. Patrick's. He was not immediately recaptured and a warrant was taken out for his arrest.

Just over a year later, on 23 April 1975, he was re-arrested—under that warrant—in Strabane. While he was being questioned by the police he is said to have volunteered that he had taken part in the placing of a bomb which had exploded in the British Legion Hall in Strabane on 21 January 1975. He was remanded in custody.

On 29 May 1975 he was returned for trial on the original firearms offences and on 22 September 1975 he was convicted of those offences and sentenced to three and two years imprisonment, to run concurrent. In the usual way, his term of imprisonment was set to commence from the beginning of the time in remand custody, i.e. from March 1975.

Whilst he was serving sentence for the firearms offences, it was decided by the Director of Public Prosecutions that he should be prosecuted for his alleged part in the bombing of the British Legion Hall. He was committed for trial on 13 April 1976, charged with (1) causing an explosion, (2) making an explosive substance and (3) possessing an explosive substance with intent. His trial at the Belfast City Commission (the superior court which deals with all scheduled offences heard on indictment) was set for 21 June but had to be adjourned, and the trial took place on 8 September 1976. He was found guilty on all three charges and sentenced to twelve years on the first charge and ten years on each of the other charges, all three terms to run concurrently.

He subsequently appealed, but the Court of Criminal Appeal (with the Lord Chief Justice presiding) upheld the conviction and sentence.

7. Comment: Further information on the case and comment follow in a telegram to be transmitted by Embassy Dublin of September 6. Stout.

C. WILLIE GALLAGHER'S LETTER TO HIS PARENTS

Willie Gallagher wrote the following letter to his mother and father the day he decided to go on a hunger strike. His fears as to beatings and maltreatment seem to be brought out in this letter.

DEAR MA, DAD: I've a bit of bad news, do you remember that thing I promised you, I said I'd wait six weeks, well I've went on hunger strike today 11 July for status. I'll explain my reasons in a minute. I was going to go on it for a re-trial but I didn't think you'd like it, if so let me know through a letter. Well it all started on Sunday when we were moved from H1 to H2, of course I was picked out for special treatment. Before I never really believed I was being victimized now I do. governors PO so have confirmed this for me they told me I was in for a hard time, the governor said he hopes I starve to death and that I should go on the blanket to get out of his way. I complained about the beatings which I'll explain in a minute and he refused to acknowledge this information.

Anyway back to Sunday, after dinner in H2 I was taken out of my cell and taken into the class office, five screws were there two whose names I don't know but will find out and name them when the doctor comes up. First of all they said they knew all about me and all that, then he said I was to call him sir (Well I never have called anyone sir and will still refuse to do so. That's when the punches and kicks started.

I don't mean little taps either, well after about 15 minutes of this he asked me again. I said nothing. Two of them grabbed my arms, one hit me a big kick between the legs and as I was going down got a boot just behind the ear. That's when I passed out. I woke up in my cell. Twenty minutes later I was taken down again same thing happened for about 15-20 minutes except I never passed out. I was taken back to the cell. About half an hour later, they came into my cell the cell this time same again, this time when they kicked me to the floor the piss pot which was filled was threw around me. Later that night I was taken to the prison hospital to recover.

I spent two days, now I'm back but my face is still swollen and several bruises about my body. I thought they were going to do me in. It would take to long to mention the harrassment etc etc. In other words I couldn't stick all this and had to go on this strike before I get kicked to death. Now I think I'll just be locked up all the time. Maybe more beatings. The governor tried to get me to call him sir to but this I refused to do so. The doctor said (when I was down in the hospital) that he couldn't risk giving me pain-killers as I received too many blows to the head as well. Well that's about all so far, the next few weeks should be interesting. They mightn't let me have visit, but I'll get letters out. It seems as if this will be a long one this time but I prepared for the whole way this time, better me doing this than the screws doing it for me. Well I'll sign off for now, tell all the kids I was asking for them.

All My Love,

WILLIE.

D. BRENDAN GALLAGHER'S VISIT TO DELEGATION IN WASHINGTON,
SEPTEMBER 28, 1978

The following is a transcript of a conversation with Brendan Gallagher on September 28, 1978 upon the occasion of his visit to Washington, D.C.:

Mr. FISH. Today is September 28 and I have in the Capitol a visitor, Mr. Brendan Gallagher, who comes from Strabane in Northern Ireland. He is the father of Willie Gallagher. When I met the father in Belfast last month, Willie was in the 48th day of a hunger fast. Willie is an H-Block prisoner in Long Kesh. At that time we intervened and Willie went off his fast. His father is here in Washington to bring me up-to-date on Willie's condition. I am very grateful to you, Brendan, for presenting me in behalf of yourself and the Mayor of Strabane this coat of arms of the community. I thank you very much for that.

Mr. GALLAGHER. I should be thanking you because I really have to thank you for the life of my son. If we hadn't been fortunate enough to have you in Belfast at the time I'm afraid my son would be dead now.

Mr. FISH. Brendan, I understand from you that your son has regained some weight, some 26 lbs., but that he still is bedridden and cannot walk.

Mr. GALLAGHER. That's correct, and he was very very close to death. I would estimate him to have been within some 24 hours from death when he came off it. My son, when he went on hunger strike, suffered a severe beating. Therefore, his condition going on the hunger strike was very very poor. The time left for him when you came over was very very little. I'll say that this is uncommon to American people, but to us living in Northern Ireland under the conditions that we do live under, it is not uncommon. In actual fact, we're in a state of war, continuous war, where people can't walk the streets. Because of the campaign that I have taken over to prove my son's innocence, I have been arrested 183 time in one year. I have been under constant surveillance. When I leave the

house, soldiers come and knock on my door knowing full well that only my wife is in. They told her once they had very bad news for her, that your son just tried to escape from Long Kesh and has been shot dead. My other son, Andrew, since Willie came off the hunger strike, has been attacked by the army, beaten, put in the back of the land rover and kept in a public place to be seen by people coming out of bingo, and then beaten mercilessly with butts of rifles and kicked unconscious. They put his leg up on a block and jumped on it. The police arrived, they had to take my son to the barracks. They had to get a litter to carry him in, they sent for the doctor, and my son had to be taken to the hospital. This may sound really brutal to you but as a matter of fact it is commonplace in Northern Ireland.

Every day, someone, somewhere has been arrested and they are taken to these so-called Diplock courts. They are kangaroo courts because in that court the judge can accept as evidence a signed confession from a man who's got his fingers broken, his nose broken, and maybe his eye put out in order to get him to sign the confession in the first place and he is convicted on that as the sole evidence. In my son's case he was convicted, not on a signed confession at all, my son didn't sign a confession and the confession was concocted and contained phrases that are foreign to Strabane people. Two witnesses, two crime witnesses testified that my boy was not the bomber and yet my son got 32 years. That was all the evidence that was presented in that court.

Mr. FISH. Well, as you know, Brendan, when I was in Northern Ireland and I met you the very first evening that I arrived there, we sent telegrams that night to Roy Mason and to Minister Concannon and to others, in addition to asking for intervention because of the length of time your son Willie had been on the hunger strike, we did ask for a retrial because a great deal of publicity had been given to the case. I just want to assure you here and now that I will be writing to Minister Concannon again anticipating Willie's return to health and return also to H-Block. We want to make absolutely sure that the officials know that we in the Congress will know if Willie is mistreated when he gets back for having successfully beaten the system in his hunger strike. I will send you a copy of the letter to Mr. Concannon and I also will send a copy to Roy Mason. You were telling me a little while ago about Andrew, another son, where the British Army picked him up and beat him up as you said and attempted to break his leg. You had a third son at the scene, what is his name.

Mr. GALLAGHER. Brendan, he is called after me.

Mr. FISH. What did they say to him?

Mr. GALLAGHER. They said to Brendan, it's Andrew's turn tonight and it will be yours tomorrow night and the next night and tell your old man he is going to get a head job.

Mr. FISH. And what does a head job mean to you?

Mr. GALLAGHER. A head job means that S.A.S. will put a bullet in your head. Again, I say, assassination by the S.A.S. is not uncommon in Northern Ireland. The media in Britain try to make it out as a Catholic and Protestant affair over there. Yet we know of a number of assassinations carried out by S.A.S. where either the I.R.A. is blamed for it or the loyalists are blamed for it. I met with one of the loyalist leaders, I wouldn't like to mention his name publicly because it may get him in trouble, but he assured me that I can travel anywhere in Ireland or outside it without any fear from any loyalist at all, and I think to back that up, a lot of loyalist prisoners' relations, their fathers and mothers and so forth have met me at Long Kesh and they now know me from my photographs appearing in papers and they have expressed concern about Willie, asked about his health and told me similar cases about their sons, their husbands. This is not just happening to Republicans. It's happening to everybody that they pick up. Once they decide to pick you up, you're guilty. They say you are guilty so you are going to be guilty anyway. Then Diplock courts are just another way of internment people.

Mr. FISH. Do you think your son Andrew who has been beaten up will subsequently be arrested and tried?

Mr. GALLAGHER. I don't have any doubt at all that within 6 to 8 months Andrew will be picked up. He either will be charged with possession of a weapon or carrying a weapon at some unspecified date or that he was involved in a bombing or a shooting, or a robbery. My son Willie was accused of throwing a bomb, of having been involved in shooting incident in Strabane, in fact, I was able to prove that

he was in England. He is also accused of doing an armed robbery when the actual facts are that he was in the hospital wing of Crumlin Road jail. Fortunately for the police and unfortunately for us they find their mistake but that doesn't let that particular person off the hook. They will be tried again for something else. Even if you are released, you are not free. Can I tell you, sir, that the special powers act, I don't know what it means on the books, I know what it means on the ground because I personally was arrested 183 times in one year. In actual fact, what it means is this, that you can be arrested, taken away and no one notified about where you were taken to, you are not allowed access to any legal advice or to a doctor or to a priest. They can hold you for 7 days. Then, they must charge you or release you. You are allowed to walk out of that police station or army barracks and as soon as your foot touches what they call the queen's highway, they can rearrest you again and hold you for 4 to 7 days and they can keep this up indefinitely unless someone finds out where you are at. Terror has been going on in Northern Ireland, Britain is ruling only by terror and terror alone. This, sir, is what is happening in Northern Ireland today.

Mr. FISH. Brendan, are you in fear of your own life?

Mr. GALLAGHER. I am very much in fear of my own life. In fact, after these threats have been made against people, people have disappeared. People, in fact, have been getting shallow graves and either I.R.A. or U.D.A. has been blamed for these killings. For an actual fact when they investigate and they have come up and said we didn't have anything to do with it, I think the leaders now on both sides, both I.R.A. and the U.D.A., are fully aware of the provocative nature of these killings. They are known to antagonize one against the other and that, sir, is to keep the British army there. That's all, they say they are keeping the army in Northern Ireland as a peace-keeping force. All I can assure you, sir, the only terrorist in Northern Ireland today are the British army. I would like to go on and state that, sir, that because of the publicity that was given my son's case and because of the BBC program, even the censorship version, my son has been seen to be innocent by all the people of Britain. The trade unions are not taking up the case over there (in Britain) and I hope when I meet with them next Monday to get them to call for retrial.

Mr. FISH. Trade unions in Northern Ireland have come to your assistance, haven't they?

Mr. GALLAGHER. They have, of course.

Mr. FISH. Are they acting as sort of a bodyguard around your home or with you or when you are in the country?

Mr. GALLAGHER. Well, because they have beaten up Andrew and because of the threat to my other son, the trade unions have agreed to monitor the system of Strabane and each day they do call at my house. They keep a lookout, they are keeping watch because they know that I have been followed around by armed men. These armed men have been intimidating reporters who have come to see me. This is really happening everyday in Northern Ireland. Reporters have come to my house; they walk past and they threaten by showing that they are armed. The way it is today, these people, reporters, and so forth, I guess, have no idea if they are S.A.S., police in plain clothes, some paramilitary, they just have no idea who it is. But when you see a gunman in Northern Ireland you like to keep well aware of the road.

Mr. FISH. You said you hope to address the trade unions. Where would this be and when?

Mr. GALLAGHER. At a Liberal Party conference which starts in Blackpool on Monday in which every member of the British Cabinet will be there. There I intend to confront them with the situation about Andrew's case, Willie's case and about what exactly will happen to the rest of my family. When we are suffering intimidation which has been public, no friend can talk to me in the street, for within 10 minutes of seen talking to me in the street of Strabane, he is arrested. Under intimidation, they tell them straight if they see me again, he is going inside for 7 days at least and he better look after his own family and forget about me. This has been told them, sir.

Mr. FISH. Brendan, you are a man without fear really. One of the things that impressed me in Northern Ireland is that we met with so many people who you know who have been arrested, harassed, members of their family incarcerated that they haven't given up at all. They are very vocal, very outspoken, they want to change the system and they are not intimidated by all these threats.

Mr. GALLAGHER. Well, sir, I think you have given me credit for being brave when the actual fact is that I am not. My son Willie has gone through this system over there; and it is very obvious to me now that Andrew is going to go through this system and when you have 6 sons, sir, you have to take a stand because I have to live with me and knowing what I know, I have to do something, otherwise I could not live with myself. I think that the most difficult thing in Northern Ireland is to live with yourself. People have been intimidated all over the place and I think, sir, that the time has come when most Loyalists and Republicans see the true situation and there is going to be a peace agreement between them in the very near future, sir, if it is handled properly.

Mr. FISH. That's the most optimistic note I came away with after meeting with both sides, leadership of paramilitaries on both sides, that they do see this point and that they want to get together. I wonder in the remaining minute here or so, Brendan, could you describe H-Block and what it means to those people and the treatment that they are getting.

Mr. GALLAGHER. I think to some H-Block would be the same as one of the Jewish concentration camps in Germany during the last war without the gas chambers. It has got all the earmarks and we have just seen on television over in Britain the film Holocaust and, believe you me, sir, there's nothing was shown on Holocaust that could not be taken in Long Kesh. Long Kesh, they can kill them in there as they have done; they beat them up; they take them in for appendix operations, people can have their appendix taken out 3 times in Long Kesh.

Mr. FISH. These are all because of internal injuries caused by beatings?

Mr. GALLAGHER. That is correct sir. They keep them in a small place, walls all white, and quite a number of them, sir, are going blind because of the white light that has been kept on in the cell continuously all the time.

Mr. FISH. Brendan, thank you very very much for being with us.

Mr. GALLAGHER. Thank you, sir.

E. LETTER TO BRITISH PRIME MINISTER FOLLOWING BRENDAN GALLAGHER'S VISIT

Subsequent to Brendan Gallagher's visit to Washington and in keeping with the promise made to him on that occasion, the following letter was addressed to Prime Minister James Callaghan. Copies of the letter were sent to Secretary of State for Northern Ireland Roy Mason, Home Secretary Merlyn Rees, Minister of State (Northern Ireland) Don Concannon and the British Ambassador to the United States Peter Jay.

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP
AND INTERNATIONAL LAW OF THE
COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., October 5, 1978.

The Right Hon. JAMES CALLAGHAN,
London, England.

DEAR MR. PRIME MINISTER: On August 28, 1978, upon our arrival in Belfast, we met with Brendan Gallagher, the father of Willie Gallagher who was languishing in the Maze Prison in his 48th day of a hunger strike. He voiced his concern that after seeing his son that day, he was convinced the boy's life was in grave danger. He told us that he believed his son would discontinue the strike if he could be guaranteed that no reprisal would be taken against him upon his return to his cell.

This prompted us to send a telegram to you, the Home Secretary Merlyn Rees, Secretary of State for Northern Ireland Roy Mason, and Minister of State Don Concannon appealing for guarantee from you on humanitarian grounds. We also offered to act as intermediaries to

convey to young Gallagher assurances that no reprisal would ensue should he discontinue his hunger strike. The following day we were gratified to learn that the boy in fact had discontinued his strike.

Recently, we met Brendan Gallagher in Washington who told us that his son is well on the road to recovery, even though he is not as yet capable of walking. We remain concerned about the treatment Willie might expect after his recommittal to H Block. This concern is based on reports that in recent weeks various incidents have taken place which indicate that reprisals are already being directed against members of the Gallagher family. If these reports are true, we are fearful that once Willie Gallagher regains his health, the very reprisals we sought to prevent will indeed take place.

We renew our appeal to you to take steps to assure that under no circumstances will Willie Gallagher or members of his family suffer any kind of ill treatment or reprisal as a result of Willie's having gone on a hunger strike.

We, in the Congress, and members of the Irish-American community who have been touched by the Willie Gallagher case urge you to give us the assurance we seek.

Sincerely,

HAMILTON FISH, Jr.,
Ranking Member.
 JOSHUA EILBERG,
Chairman.

F. REPLY BY THE BRITISH GOVERNMENT TO LETTER

On November 9, 1978, the following reply to the delegation's letter of October 5, 1978 was received from Secretary of State Roy Mason:

NORTHERN IRELAND OFFICE,
 STORMONT CASTLE,
Belfast, November 1978.

Congressman JOSHUA EILBERG,
Chairman, Subcommittee on Immigration, Citizenship and International Law of the Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN EILBERG: The Prime Minister has asked me to reply to your letter to him of 5 October, which was also signed by Mr. Hamilton Fish, about Mr. William Gallagher. Mr. Gallagher is serving a sentence of 12 years' imprisonment for his part in the bombing of the British Legion Hall, Strabane, on 21 January 1975.

In your opening paragraph you seem to be suggesting that you were in some way instrumental in bringing about an end to Mr. Gallagher's long hunger strike. I must make it clear, in case there is any doubt in your minds, that Mr. Gallagher had already begun to take nourishment, at his request, before you had arrived in Northern Ireland on 28 August. It seems clear, therefore, that your intervention could not have had any bearing on his decision to start eating again.

Mr. Gallagher was transferred from the prison hospital unit back to his normal location on 27 September, by which time he had regained his weight. The latest medical reports indicate that he is in

good general health. Since he began to take food again he has made no allegations of assaults or any other form of abuse by prison officers.

Prison officers are subject not only to a strict code of discipline, but also to the ordinary law of the land. Prisoners are not deprived of access to the courts, and it may interest you to know that William Gallagher is pursuing a civil claim for injuries which he alleges he received at the hands of prison officers on 9 July 1978, a short time before the start of his hunger strike.

I have noted what you say in your letter about reprisals directed against members of Mr. Gallagher's family, but in the absence of more precise information about what is being alleged there is no action which I can take in the matter. If as you imply the family are for some reason fearful for their well-being, the best course would be for them to bring their apprehensions to the notice of the local police.

Yours Sincerely,

ROY MASON.

It is interesting to note that Mr. Mason persists in making the statement that Willie Gallagher had gone off his hunger strike prior to the delegation's arrival in Belfast on August 28. This is maintained in spite of the father's statements to the contrary.

It also strikes the delegation as rather strange that Mr. Mason would have Brendan Gallagher register his complaints of maltreatment and harassment to the local police who are the very people responsible for the harassment.

Attention is also drawn to the letter received by the delegation on August 29 from the Consul General Charles R. Stout establishing the date Willie Gallagher went off his hunger strike.

CONSULATE GENERAL OF THE UNITED STATES OF AMERICA,

Northern Ireland, August 29, 1978.

CHAIRMAN EILBERG: Deputy Secretary James Hannigan of the Northern Ireland Office called me at 10:25 a.m. to say that the Northern Ireland Office is immediately issuing a low-key statement that Gallagher has indicated to his medical officer that he wishes to resume eating. He is being given an appropriate diet, and his progress toward the resumption of a normal diet is being watched carefully. Mr. Hannigan said the decision to resume eating was Gallagher's.

Mr. Hannigan at my request reviewed government policy on hunger strikes. He said that for several years it was policy that the decision to stop a hunger strike is the decision of the prisoner striking. There is no force-feeding. During a hunger strike, a medical officer continuously and carefully monitors the condition of the striker, and gives him every offer of assistance possible. The decision to strike and to stop striking is that of the prisoner alone.

CHAPTER III.—MEETING WITH THE NEW ULSTER POLITICAL RESEARCH GROUP

On August 29, 1978, the delegation met with representatives of a new political group at the Hotel Europa in Belfast, the New Ulster Political Research Group.

This group was especially noteworthy since it was comprised of members of the Loyalist paramilitary organization, the Ulster Defense Association, and was described as the political arm of the Association. It was headed by Glenn Barr, a former Northern Ireland Assemblyman and representative of the Northern Ireland Convention, and Andy Tyrie, the Supreme Commander of the Ulster Defense Association.

It was the first expression heard by the delegation of the position of the Loyalist paramilitary for a desire to solve the sectarian issues by peaceful political means instead a continued dependence on violence and killing.

Whether the formula proposed by this group is feasible or not, the meeting was enlightening in that it demonstrated clearly that the Loyalist para-militaries were disenchanted by continued British domination and were actually seeking a political solution by negotiation with the Republican groups, independent of British control.

Excerpts of the transcription of a recording made of this meeting follows:

Mr. BARR. You know Andy Tyrie, you have heard of Andy Tyrie and his position. And, he is the Supreme Commander of the Ulster Defense Association.

Mr. CLINE. Andy, you have been in the states.

Mr. TYRIE. Yes. We were at Amherst in 1974, the Amherst Conference in 1974.

Mr. BARR. So, Andy is the Supreme Commander of the Ulster Defense Association and all the affiliated groups of the Ulster Defense Association.

John McMichael is a member of the New Ulster Political Research Group.

Mr. EILBERG. He is head of what?

Mr. BARR. He is the secretary of the New Ulster Political Research Group, which is a group that has been set up to develop political policy within the Ulster Defense Association.

Mr. FISH. New Ulster Political——

Mr. BARR. Research Group.

Mr. EILBERG. Would you identify the aims and purposes of the Ulster Defense Association?

Mr. BARR. Perhaps we ought to identify the names first. Tommy Lyttle is also a well known figure of the Ulster Defense Association. He is the PR man for the New Ulster Political Research Group.

Harry is the coordinator, Harry Chickem is the coordinator of the New Ulster Political Research Group, and he is also a member of the Ulster Citizens Civil Liberties which is another subsidiary of the Ulster Defense Association.

That was the group that set about drawing up a new bill of rights for any proposed settlement in Northern Ireland.

Myself, I am Chairman of the New Ulster Political Research Group.

The aim and objective of the New Ulster Political Research Group, has been the task of formulating political policy for the Ulster Defense Association.

The problem up to date has been that the Ulster Defense Association has always relied on the established politicians to be able to represent them politically. But, we believe that over the last few years that that representation hasn't been reflecting the true feelings of the grass root level people.

In that the Ulster Defense Association being the largest para-military organization possibly anywhere in the world, we believe that the loyalist politicians with whom we have always identified with do not truly represent our feelings.

So, we have been given the task of—within the New Ulster Political Research Group—to form the policy, political policy on behalf of the Ulster Defense Association.

If you want us to get into what we have done at the moment, certainly we would be prepared to do that.

Mr. EILBERG. You might do that. You are a solicitor, by the way?

Mr. BARR. No. I was a member of the Northern Ireland Assembly and the Northern Ireland Convention for the Londonderry area.

The position is that we have found over the years that we have been used by politicians. We believe this is the basic problem in Northern Ireland, and that both sets of people have been used by manipulating emotional type politicians.

We believe that we haven't been truly represented politically.

Mr. EILBERG. Who has manipulated you?

Mr. BARR. Well, on the loyalist side, the loyalist politicians have manipulated the Protestant people, who have believed the unionists.

And we also believe that on the Catholic side they have been used and manipulated by emotional type politicians.

Because, over the years if you look at politics in Northern Ireland no one has talked about pure politics. Every election time, all you have is a flag being waved at you repeating threats to your constitutional position.

The unionists keep waving the union jack and saying well, if you don't vote for us you are going to be in a united Ireland. Therefore the people go out and vote for them to safeguard their constitutional position.

Likewise on the catholic side. Their politicians were out waving the tri-color, green, white and gold, and saying well, vote for us and we will promise you a united Ireland.

But, none of the two sects were prepared to talk politically. There was no one putting forward political policies, economic policies, or anything else.

And, we believe that after this period of time we have awakened to this problem and we are not prepared to be used any longer by these manipulating politicians.

What we are saying is that we want to formulate a policy that will serve the two sections of the community in Northern Ireland, the Protestant and the Catholic people.

Our basic philosophy is this, we believe there is only one constitutional arrangement that will offer the people in Northern Ireland equal citizenship and the right to live, and the duty of learning to live together.

So, what we have done, we spend at least one day a week in full session, and we spend as well as that, possibly three, four nights a week, talking to various groups and influential people.

We have gone through every option that has been voiced about the Northern Ireland government. We have considered all forms from total integration with the United Kingdom, a united Ireland, federal Ireland, and you name it, we have gone into it in depth.

We have come up with one solution. We believe the only solution that offers long term stability to the people in Northern Ireland.

We believe that the only thing makes sense is independence. An independent Northern Ireland. Now, we have gone for a complete withdrawal of Britain out of the scene.

We believe that if Britain itself declares an intent to withdraw from Northern Ireland that will threaten the protestant population and they will be driven back into a tribal camp for constitutional security.

We believe the only way which will relieve that situation is for the Dublin government, who is also invested in this Northern Ireland, to do exactly the same as the British are going to do, and that is to make a joint declaration between the two sovereign powers that they will withdraw from Northern Ireland.

That they will encourage their own respective groups in the north to live together.

We believe that not only will there have to be an independent state, because it will be a complete packet in that there will have to be a new political structure which will allow the two people to live together, a new bill of rights and a new constitution for the state. We are in the process of drawing that up now.

The political structure that we are using is based on the American type system, the Presidential type, with one very fundamental change and that is the election of the Speaker of the House.

You see, we believe that there cannot be institutionalized power sharing in Northern Ireland because it defeats the objective of what we are trying to achieve.

Mr. EILBERG. Cannot be what?

Mr. BARR. Institutionalized power sharing, whereby—those that said that people would be given jobs in the cabinet because they were either Catholic or Protestant.

We believe that is totally wrong. The wrong way to build a new society. But, we believe that there has got to be a structure that will allow the Protestant and Catholic people to learn to work together.

So, we believe the only way in which that can be achieved is in a Presidential type structure, whereby the people will have direct election for a Prime Minister. He will select his executive, appoint his executive from outside of the legislature.

The people will elect their legislature. But, within the legislature itself we believe the key to get the two sides working together will be in the election of the Speaker of the House.

Now, we believe that the Speaker of the House should be something similar to the Speaker in the British House of Commons, the Speaker that you have yourselves in the American system, and he will actually be the man who will appoint the committees, the chairman of committees based on proportional representation of the legislature.

He will set the calendar of the debates, he will set the timetable for debates, et cetera, et cetera. We are going to make him a very powerful man.

But, how do we get him elected to bring about this consensus of politics. We are going for a structure that the Speaker of the House must be elected by two thirds of the legislature.

Now, at this point in time no group in Northern Ireland has got two thirds of the legislature. So, it means that the Prime Minister will be looking to get the Speaker of the House on his side, as it were, to make sure that he gets his debates and gets his bills on to the House, on to the floor of the House.

So, how does he get the Speaker elected? Well, he will have to make deals with the minority parties that are elected in the legislature, to get their support to get the two thirds to get the Speaker elected.

Now, how can they make deals? We believe the only way in which he can do so is to offer executive appointments to minority groups.

That is not institutionalized, these are just political deals being made behind closed doors. And, we have talked to a lot of Catholic people with us, Paddy Devlin, among them for instance, and Paddy Devlin believes that it is the only thing that has come forward in the past 10 years that offers any ray of hope.

We are not going to the political parties with it because we believe that they are so intransigent in their positions that there is no way in which they are going to change, especially now when an election is coming up. They are not going to change horses in midstream.

So, our strategy is that we are talking to influential people in political circles, influential businessmen, second and third tier politicians such as local politicians to get them to put pressure on the hierarchy of the parties. That is the only way in which they are going to change.

There is only one other thing that I think that you might find interesting and I would like your views on it. We believe, that in the absence of the two sovereign powers which up to date have given guarantees or have become the guarantor of their own respective groups, i.e., Dublin has given a guarantee to the Catholics; Britain has given a guarantee to the Protestants; we believe that those things have got to be removed. Those two guarantors have got to be removed from the situation.

As long as they are involved, the people are not encouraged to come to learn to live together. We have seen this through the Cypriot situation in which the guarantors were indeed the very people who were creating the problem in the first place.

We don't believe, for instance, that the John Hume's idea of a new society in which one side respects the other's culture and this type of thing can succeed, because here again that is the very thing that divides you. Therefore people will not come together.

We believe that with new institutions, a new identity for the Northern Irish people, which are the things that are lacking because they don't know whether they are Irish or British. We are in a limbo situation, but once those two sovereign powers are removed from the situation there will be a vacuum.

We believe that there will have to be a third guarantor, a psychological guarantor, one which the two communities can identify with.

And, to explain it in detail, we are going for an American guarantor. Now, we don't anticipate or envisage American GI's in the streets of Belfast, or elsewhere. It is the last thing we want, it is the last thing the American government wants. We are well aware of that.

But, we believe that if for instance the American government were to appoint a Supreme Court Judge to head our Supreme Court for a period of eight to 12 years. If the American government, for instance, were to accept what we are doing, and the two sovereign powers accept what we are doing and agree with what we are saying, then as a psychological guarantor to each side on constitutional matters, then the American government would appoint a Supreme Court Judge to be the head of our Supreme Court for say the first eight or 12 years of the new state. That is the only involvement we are asking from the Americans.

The reason for that is simply because of the fact that the Americans are the only nation that offers a psychological guarantee to the two communities in Northern Ireland.

Mr. EILBERG. Can I just interrupt. I didn't want to interrupt before this, but but this idea I think needs some further explanation at this point.

I would think that what you are suggesting, that is the U.S. guarantor in the form of the Supreme Court Justice would require a constitutional amendment to the U.S. Constitution.

The amendment process is a very slow one, as you know. It is very difficult to get two thirds of both houses and three fourths of the states to ratify a constitutional amendment. You are aware of all this?

Mr. BARR. Well, I think that if you see the difficulty that we are in, in that it is an emotional one, people will say well you know the Protestants are only going for independence because they want to get guns and shoot all the Catholics. The Catholics are going for guns, or the Catholics are going for independence because they believe that it is a stepping stone to a united Ireland. We don't believe in that at all. We are totally opposed to a united Ireland.

But, we want to give guarantees to the two communities in Northern Ireland that once they take this step of independence that it won't threaten their constitutional position.

There will be that mistrust in the early stages. We believe that there will have to be someone to provide the guarantee to the two sides.

Mr. EILBERG. Now, the guarantee would provide what?

Mr. BARR. Guaranteeing that for instance that if Protestants go for the breaking of the link with the United Kingdom, and they go for independence, that there is someone powerful enough to say to Jack Lynch and the southern government that, if these people are cutting the Brits out, and their guarantee is gone, there is no way you are going to march in and take over the six counties and annex them into 32, or with the other 26.

We need someone strong enough to be able to say to Lynch, that once we break off our connection with the United Kingdom and we break off with our guarantor that someone isn't going to welch on the deal and have Irish troops march into Belfast and take over.

Mr. EILBERG. How would the United States exercise this guarantee?

Mr. BARR. I think that if you look at whole economic situation in relation to Dublin and everything else, and the influence that America has on the Free State government. I think that that would be enough.

Mr. EILBERG. Without the use of arms?

Mr. BARR. Without the use of arms.

Mr. FISH. Is it really within the realm of possibility that troops from the Republic of Ireland would march in here with the exodus of the British?

Mr. TYRIE. It is a psychological factor.

Mr. BARR. It is a psychological thing, we know that Jack Lynch wouldn't do that. But, what we are saying to the protestant people, okay if you think—

Mr. FISH. You think they fear it?

Mr. BARR. They fear it.

Mr. FISH. I see.

Mr. BARR. It is psychological.

Mr. FISH. Because I think for 25 years since I have been following the scene, having lived in the Republic in the '50's there has never been any interest, official interest, in any action like that.

Mr. BARR. It is just that you have to have a psychological guarantor.

Mr. EILBERG. It has been my impression that there are such hostilities involved in the minds of so many people here, both Protestant and Catholic, who have had relatives murdered, beaten by the other religious group, do you really think that you could have a peaceful state in view of the bloodshed that has occurred over the last 30, 40 years?

Mr. BARR. Well, no doubt it is going to take five, 10 years for that to die down. We are not that naive. But, we believe that there has got to be a starting point.

So, we have two options. As a para-military organization we can say, turn the lads loose. Let them go out and shoot all the Catholics and let's have a civil war. At the end of the day we have still got to find a solution.

We are saying, let's go for a solution now rather than fight and then look for a solution.

Mr. EILBERG. What about the role of the Catholics that are outnumbered two to one? I would think that many Catholics would be afraid of an independent state because they would be outnumbered in Northern Ireland. How do you react to that?

Mr. BARR. Well, the thing is this. We are not naive to think that if we went into this agreement, because let's bear in mind that independence will only come about when it is negotiated by the two communities coming together to negotiate over the sovereign powers that are involved in the struggle.

We are not naive to think that we can welch on the deal, because if we set up an independent state and then we try to turn it into a Protestant state we would last about two weeks, because we would get all types of embargoes.

Britain would put an embargo on you. The EEC would put an embargo on you. We would last economically about two weeks.

Mr. TYRIE. The point is that when you come down to it that it is possible for each group to make this thing workable. So, therefore the two are going to have to agree.

Any solution that is imposed now, or tried to be imposed now by the British government, the Catholic community can make it unworkable.

And, if the Protestant community disagreed with it then they could make it unworkable, you know. So, that is recognized on all sides. So now you look for something that they will both agree to.

Mr. EILBERG. But, who would be speaking for the protestants, who would be speaking for the Catholics?

Would the Protestants follow you individually, or don't groups or committees need to ask for some kind of official status so that they are indeed talking for the Protestants?

Mr. BARR. Well, we just said that we wanted our proposals discussed openly and let's get it debated in the open, and then let the people decide whether they accept this solution or not.

When the people decide, then they will also elect their leaders and negotiate with the sovereign power.

Mr. EILBERG. All right. The other question I would have would be the economic one. I don't know the extent of the subsidy from Great Britain now.

Mr. BARR. About 800 million pounds.

Mr. EILBERG. Now without a subsidy, I would think Northern Ireland would have considerable difficulty in functioning.

Mr. BARR. Well, you see the problem there is that many people at the present time say our unfavorable balance of payments in our economic situation at the present time is based on the present upheaval and the violent situation that exists in Northern Ireland.

We have never really taken this economic argument very strongly, because I have checked this out with our top economists here in Northern Ireland, and they agree with us that, given political stability, Northern Ireland will go back to the situation it was in in the '60's, in which we were really taking off industrially and everything else.

Mr. EILBERG. What happened in the '60's?

Mr. BARR. In the '60's we had a whole industrial infrastructure being built up. We were making world markets and we were really taking off, because we have proved to the world that we have one of the best work forces in Europe, less strikes than anywhere else, good production, and a very adaptable work force.

Mr. EILBERG. What happened to end that?

Mr. BARR. Well, the violence came in '68, '69 and thus the problems that exist at the present time. But, economically we don't worry, we are not overly concerned about it.

We accept the fact that it is an argument that has been put up against us. We believe being a part of the EEC will assist us. As well as that the economists that we have talked to, John Simpson who is the Professor of Economics in the Queens University, Belfast, agrees with us that given political stability that Northern Ireland will return to that '60 period, that era in '60 in which we were taking off economically.

As I say, as part of the EEC, we believe that America and its good will and all the rest of it will take advantage of the Northern Ireland work force as a base for Europe et cetera, et cetera.

We believe that the whole set up, economically, is not a major problem. As well as that, we believe that part of the negotiations for independence would mean that Britain would have to make a financial commitment to Northern Ireland for a period of 25, 30 years with no strings attached. That would be Britain's price for getting out of Ireland once and for all.

We don't believe it would be a handout. We are not accepting it as a handout. What we are saying to Britain as part of the negotiations would be, you have wanted to get rid of the Irish problem for 400-500 years, now we are giving you a chance to get rid of the Irish problem.

We want a financial commitment from you. This is your price for getting out of the Irish problem. We believe that they will jump at that price.

Mr. EILBERG. What kind of figures are you thinking about?

Mr. BARR. Well, that would have to be based as our economists would work it out, possibly on a sliding scale over a period of 20, 25, 30 years.

We are talking in the region at this present time, somewhere in the region of 800 million, thousand million pounds for the first couple of years and a scaled down reduced amount.

Mr. EILBERG. Do you have any idea of what the cost to Great Britain is of maintaining forces in Northern Ireland now?

Mr. LYTTLE. Let's look on this economic thing. As politicians you know yourselves that your treasury produces a set of figures, you know, and who will argue about it. No one agrees on figures, and even experts will give their different interpretations of it.

But this 800 million that Britain says is the total cost, they don't reveal the figures, what they take out of here, you know, what the people here are paying which is the same as you know as England, and Scotland and Wales.

Mr. EILBERG. So, it is less than 800 million.

Mr. LYTTLE. Yes, if the take is considered.

Mr. EILBERG. Moving in the same direction, that is why I asked the question how much does it cost to maintain the British army here?

Mr. LYTTLE. Well, if they weren't here they would have to maintain them somewhere else. If they weren't in Northern Ireland they are going to have to maintain them somewhere else anyway.

Those same troops that are here now, were in Germany, or in Gibraltar or Malta, they still have to be maintained. You know, showing that it is costing so much to keep the troops here is not relevant. It would still cost them money to keep them elsewhere.

Mr. EILBERG. I know. I am not arguing in support of your idea for the moment. I just wanted to know how much it cost Great Britain?

Mr. BARR. I am not sure of the figure. They would maintain that the subsidies that they are paying, the intervention that they are making to Northern Ireland, doesn't take into consideration the cost of the troops.

Mr. McMICHAEL. The 800 million for 1977 can be broken down to a certain extent. 250 million was given us to write off the electricity board of Northern Ireland, those are bad debts. So, that can be taken out right away.

It has been estimated, though we can't get the proper figures, for purely the military, say, of the British involvement here during the troubles, somewhere in the region of 400, 450 million pounds a year.

The 1971-72 figures which are the last economic figures that can be got purely for Northern Ireland before—it was all taken into the U.K.—was a deficit of 15 million pounds.

Up until 1972 we were actually exporting more goods than we were importing. We were running in the black.

So, the figures that are being put forward are purely from Westminster, and there is no breakdown for Northern Ireland.

Mr. FISH. You mentioned an inducement that you are proposing that initially there would be a continuation of the subsidy which would phase out after a matter of years.

What was the inducement to them you mentioned?

Mr. BARR. It is their price to get out of the Irish problem. Britain has always wanted to be rid of the Irish problem.

Mr. FISH. What you are saying, that after a foreseeable time there will be no further subsidy?

Mr. BARR. Yes.

Mr. FISH. That is the sweetener for them?

Mr. BARR. Yes.

Mr. FISH. And that will come about because of the economic revival of the underlying basic strength of the economy and the work force that will attract industry, and within a few years you would be economically stable.

Mr. LYTTLE. Plus the fact they get the political argument over with. The people here, you know, we talk to the ordinary man on the street, he is going to say, I would be in favor of that idea, but what about the social security benefits. Am I going to suffer financially? So, in that sense you have to reassure him, and the best possible way to reassure him that his standard of living will be maintained in the transitional period is to maintain this subsidy.

Mr. FISH. And the new government, of course, will assume all obligations of the British government.

Mr. LYTTLE. After a period of time.

Mr. CLINE. Could you clarify what is meant by getting rid of the Irish problem. Does that mean for the Brits to get out completely and give independence to the six counties?

Mr. BARR. Total independence means independence that we can possibly achieve. Now, that doesn't mean building a wall around Northern Ireland, not by any stretch of the imagination, nor are we proposing that.

What we are saying is that we have the sovereign right to decide for ourselves what our future will be. We have the right to decide our relationships, international relationships with other nations.

Certainly we want a good neighborly relationship with the south because we are living on this island. We want a good neighborly relation with Britain, and with Europe, and with every other member of the free world.

What we are saying is, that we as Northern Irish people have the right to decide that for ourselves. We don't want to build a wall around the six counties and close out London and the South or what have you.

Mr. CLINE. Well suppose that Britain would not prefer to get rid of the Irish problem, they would like to keep it inasmuch as there is a possibility of oil off the Irish coast.

There is also the possibility of developing uranium deposits in Northern Ireland.

Mr. BARR. They are in dispute now with the southern government over that you know. They think there is oil going to be discovered there, and that is 300 miles out the Atlantic. They are fighting over that, you know.

So, if there are natural resources, if there is oil, it would be far better that people in Northern Ireland control it, not the British government.

Mr. FISH. What about the problem with Scotland and Wales? If Northern Ireland became independent, wouldn't that accelerate the movement for independence in Scotland and Wales?

Mr. BARR. That is quite possible, you know, we are not closing our minds to it. But, there again that is a Westminster problem and they will have to deal with Scotland and Wales.

Mr. FISH. Well, you are thinking about Westminster problems.

Mr. BARR. Well, okay. What we are saying to them that they have a bigger problem here with Northern Ireland than they have with Scotland and Wales.

Do they want to continue sending British soldiers over here to be murdered in the streets. And eventually maybe some day the Protestant paramilitary are going to turn their guns on the British soldiers as well. Because if Britain continues to treat us the way they have been treating us, you know, we are going to have to take a stand somewhere.

Mr. TYRIE. There are two things that we are saying. Northern Ireland has a violent problem, and its people are dying. And also you have a stretch of water separating the two islands, that makes it a bit different—

Mr. FISH. I see the difference.

Mr. TYRIE. If for instance we were to go across. If I was to take you to Bradford, or Birmingham, or London, or somewhere in England at the present time, you would be accepted as an American. But they hear my accent and they say, oh he is Irish. They don't treat me as British.

Mr. FISH. They don't treat you as part of the British islands?

Mr. TYRIE. No, I am not British. I am one of the black Irish.

Mr. CLINE. Well, how do the British troops treat you here?

Mr. TYRIE. Well, you know, they have 10 years experience. When they come they are looking for sides, those who will support them and those who are against them.

There are quite a few of our people in jail so the security forces treat us exactly as they treat anybody else. If we break the law we are punished like everybody else.

Mr. CLINE. How about coming into your homes without a search warrant?

Mr. TYRIE. Oh yes.

Mr. CLINE. Checking on the street. Have your people been stopped?

Mr. TYRIE. Oh yes, there is no difference there. We are also taken to Castlereagh and abused. The security forces do not lean in their job towards any side at all.

Mr. FISH. You are considered an insurgency force?

Mr. TYRIE. Yes. John has been, how many times have you been in Castlereagh?

Mr. McMICHAEL. Five.

Mr. TYRIE. Five times in Castlereagh for interrogations. It is not just one side of the community that is getting interrogated, it is not only one side of the community that is protesting inside the prison, and it is not only one side of the community that is in the prisons. Both Catholic and Protestants are in.

Mr. EILBERG. Would you correct me if I am wrong about this. It is my understanding that when you are arrested and detained that you obey the rules, that Protestants do not go on the blanket?

Mr. TYRIE. Not at the moment.

Mr. EILBERG. What is the reason for that?

Mr. TYRIE. Well, that is a long establishment type of thing. The Protestants consider they are British and if they protest too much they are backing up the Republicans demands, and they are being seen as working along side Republicans who are their enemies, and that is the big problem here.

Whereas in a normal—if we were in the position of the Republicans, we would be protesting all the time because as far as we are concerned there is a war going on here, and we consider ourselves being political prisoners. We try to stay as much to the rules as possible.

We believe in what we are doing, you know, but unfortunately we got a bit mixed up in our aims and what we really did want and we are trying to figure out now what we really are after.

But, the big problem with us protesting within the prison, that is being seen as a link up between the two para-military organizations. That is the only thing that stops a real protest.

Mr. FISH. Popular sentiment in England would be towards independence for Northern Ireland?

Mr. BARR. Well the Daily Mirror article—I am not sure if you have seen that or not. The Daily Mirror had a piece two weeks ago calling for British withdrawal—troops out of Northern Ireland. And they invited their readership to write into them and apparently six out of every 10 letters that they received have been in support of their article calling for the withdrawal of British troops.

Mr. FISH. Did they have a plan like a several year withdrawal or a phased withdrawal?

Mr. BARR. Well, they mentioned five years but they're now withdrawing from that position and in a follow-up article it said that five years may not be realistic. In Wilson's 15 point plan, Wilson originally started to look toward a 15 point plan in which Britain would withdraw from Northern Ireland in a 15 year period. Now, ten years have already passed with five years to run and it is very significant or coincidental that the Daily Mirror which is the true Labor party government paper is going for the five year withdrawal as well.

Mr. FISH. Do you agree that five years may not be realistic?

Mr. BARR. Five years might be long enough for transition.

Mr. FISH. I am trying to get at this question of popular sentiment which is important in something as fundamental as this. We keep hearing and I keep reading that the official position in Westminster is that they are waiting for a majority sentiment, an expression of majority sentiment in Northern Ireland and how would you get that? Because they went on the record as saying that pretty heavily that they are not going to change any thing because there has been no expression of the sentiment of the majority of people one way or the other in Northern Ireland. How do you propose to get a referendum or some expression of that nature in Northern Ireland?

Mr. BARR. This is our basic argument that the people of Northern Ireland will not move into that situation to create a common identity between themselves and learn to work together as long as the two sovereign powers are guaranteeing the position of the old respected groups in the North. As long as Dublin continues to back up the Catholic position and as long as Britain continues to back up the Protestant position there is no encouragement for the two sides to come out into the middle of the road. So we are proposing that if Britain will call the Unionists in and say that "Look, we believe that what has been put on the table is a fair proposal" and get the hell out of here and go over and work. If Dublin will call the SDLP—down to Dublin and say, "Look, we are not going to back up your position any longer. You are going to have to learn to work and live with the fellows in Northern Ireland. Now, get up there and work that proposal."

And until that happens, until the two sovereign powers make it clear to their own respective groups in the North that they are going to have to come out in to the middle of the road. We are going to have to get people interested, people like yourselves because if you see any merit in the idea you can spread the word back home.

Mr. TYRRE. Our job is a big one. Roughly 70 percent of the people want some form of partnership. Things like this here, we have been working on it for the last three to four years seriously. It has reached the point where the two communities really do want to work together.

There is more in common with each other than with people on the other two sides. And that is what we are basing the whole thing on. You must remember an organization like ours is really borne out of emotional bonds where people were taught that if you don't stand up and defend your areas and control your areas, the Republican, and all those chaps will come in and destroy you. And that is the way the whole organization was built up by politicians saying, Get out there and defend yourselves, which we did do.

They found that every Catholic was a member of the IRA which is absolutely wrong and really nonsense. They felt that everybody in the South, was against them so they established the Orange Order or Ulster Defense Organization—So, the two communities were emotionally involved regarding the whole situation. And what we have done here, and we are not saying that we want credit for it, but what we have done is to look for something better here, something different, and in that search for it we have stepped back. There has been no sectarian violence from the Ulster Defense Association in the last two years.

We haven't been involved in any violence at all even when there was great provocation.

There I say, what are we fighting for and why are we killing each other and who is gaining from it? The ordinary citizen is not gaining a thing from it.

Mr. FISH. I would like to interrupt here to say that this extraordinary statement is being made by the Supreme Commander of the UDA. Would you give us your name again?

Mr. TYRIE. Andy Tyrie. It had to be that way. Well, probably not for violence for violence sake but because people said to us "Here is your enemy." They identified the enemy for us in 1921 and we have never really searched for the enemy ourselves. And what I have done and what the Council of the Organization has said to the membership is if you feel that you want to have a war with somebody then, damn, then fight yours properly. If you want to fight the IRA fight the IRA, try to shoot them and bomb them, but don't shoot the wee man that is going to his work or the wee man just because he is a Roman Catholic or because he supports a Roman Catholic football team.

We are convinced now that this has happened on both sides of the community. The Provisional IRA people I am convinced have said to their membership not to shoot people because they are Protestants. If you want to shoot anybody, shoot people that you can identify as being deeply involved in the conflict.

But we have become educated the last couple of years, and we know we have made progress which is very important to us. The scheme which the boys are working on has had a hell of a lot of work done to it. For ourselves in our organization who have been emotionally involved. We had been told in advance and knew the answer—it has been a hard job for them to change minds. It is not complete, but it is well on its way. We have achieved an awful lot within the last year or so and we are working hard on it. We always say to people that we need help. The type of help we need is propaganda, we need people to justify what we are doing. We want people to look at it, not just because its coming from the Ulster Defense Association, but at the basic organization involved in it, and appreciate that we are trying to make changes. That is the most important thing.

Mr. EILBERG. Do you have any indication that the British government would go for this plan?

Mr. BARR. That is often the question that is asked. The British government will only change when they believe the majority of people in Northern Ireland are along this line. Well, if you take a poll at the present time and ask people who support independence, certainly a lot of people privately would say, "well, yes I support independence." But if you ask them to vote for it in a referendum, they are frightened to vote for it in a referendum. So, this is the problem that we face at the moment. This is the big task. To go around selling the concept to people and getting them to accept the way in which we are putting it forward. It is not the UDA looking for independence so we can all get guns and shoot all the Catholics. That is not the concept of independence that we have.

Mr. TYRIE. Another thing that I want to say here also. The Ulster Defense Association in this case is not just looking for independence so that they can get control of the country or be elected in and become the president, whatever it may be. What we are saying is we have an idea and let the people have a look at it.

Also, people keep saying to us are you going to talk with the Provisional IRA regarding the plan and we say no. And the main reason we are doing that is we don't want people to get the impression that here are the two principal paramilitary organizations getting together to run this country something like a military junta type of thing. We won't talk to the Provisional IRA because we think that is one of the worst things that could happen here. It could give a very, very false impression. As a paramilitary organization we have no desire to run this country. That would be the worst thing that could ever happen. And if our plan works right or if somebody's plan works right there shouldn't be any UDA or any IRA. That is the most important thing, because we should never be divided.

Mr. LYTTLE. On your point of the British, we think that Daily Mirror article will show the way on behalf of the British government. The British government knows we are working along these lines.

Mr. EILBERG. What did the Daily Mirror article say?

Mr. LYTTLE. The Daily Mirror article called for British withdrawal. They are the major paper and they support the government and Great Britain. They have a readership of some ten million people.

Mr. EILBERG. What was the reaction to that?

Mr. LYTTLE. The reaction was six to one in favor of Britain pulling out and giving independence in Northern Ireland. But we think that was deliberately floated.

Mr. FISH. The reaction in England?

Mr. EILBERG. In England, the reaction was six to one? I didn't understand that.

Mr. LYTTLE. Yes. And we think that was deliberately floated by the British government because they know we are working along these lines.

Mr. EILBERG. You believe what?

Mr. LYTTLE. We believe that the article was floated by the British government to test public reaction because they know that we are working along these lines.

Mr. EILBERG. When did that occur?

Mr. LYTTLE. A fortnight ago.

Mr. FISH. If I could ask you a question here. You mentioned at one point that you did not believe in the John Hume concept of cultural respect and he was a name that we knew about before we came here. I don't think that we will have a chance to see him but could you talk a little about that. I take it he is a Roman Catholic, that he was a member of Parliament, and that he is for independence.

Mr. BARR. No, he is not.

Mr. FISH. Oh, he is not for independence. Well, what is this cultural respect.

Mr. BARR. Hume basically believes that Federalism is the answer, a new Ireland. He hasn't really spoken about a new Ireland but I know that his ideas are based on Federalism. There is no way that the Protestant population will accept a Federal situation whereby a Federal government taking in Dublin and Belfast will be the Federal administrator of the country. There is no way that the Northern Ireland Protestants will accept Dublin involvement in it.

Mr. FISH. It embraces Dublin in his concept.

Mr. BARR. Yes.

Mr. FISH. A federation of Ireland?

Mr. BARR. Yes. Two parliaments with a Federal Parliament. You see, Hume's concept is that a new society will develop whereby Protestants will accept Gaelic Catholic culture and that the Catholic Gaels will accept the Protestant Ulster culture. Those are the very things that divided us in the first place. So, therefore, if you are going to try to institutionalize them, it will not work. That is the very thing that will drag down a new society.

One of the main functions of the government such as financial control—would remain in Dublin.

Mr. FISH. I am glad you explained that, I wasn't aware of that. Tell me another thing. In planning the principles of the new society because you have a great many contemporary examples. The aborted effort in Cyprus is one where they tried to have a president of one nationality and a vice president of another. And that did not work.

We have had the experience of the United States in the reconstruction of the West German government after World War II. Have you resources here in the academic field from political scientists and historians to help you in this area?

Mr. BARR. No, we are working on a shoe string operation. We have no finances whatsoever.

Mr. TYRRE. We are not asking for money at this stage. If people can provide expertise.

Mr. FISH. I didn't mean financial assistance. I am talking about scholars in the United States who might have academic experience in a most complicated area.

Mr. TYRRE. Another thing, we are hoping to get to the States to talk to a lot of people who we believe could give us assistance.

Mr. FISH. I think you would get a tremendous response?

Mr. TYRRE. The other things which we are worried about at this stage is bringing in experts. We work this thing living here and understanding the situation here. If we can understand other peoples feelings in our community, I think we will make more progress. If we bring the experts in too quick then it will become the experts idea and it will mess the whole thing up.

But it means when we do bring the experts in we will have enough of the answers, not all of them, but we will be able to argue with the experts with our point of view. But we will need the experts.

We want it in simple language so that a fellow on Shankhill Road can understand. We don't want to head it up in such a way that the legal language will make it misunderstood.

Mr. REGIS. Do you envisage a UN role in this?

Mr. BARR. No, we reckon that the worst thing that could happen is to bring the United Nations troops into the country.

Mr. REGIS. I don't mean troops, but to seek a political solution?

Mr. BARR. The political solution, no. We believe that this is why we are going for American involvement. The UN is mistrusted by either one group or the other for different reasons. We are looking for a third guarantor in the situation. We have looked at Australia, Canada and for one reason or another, there is always a reason why we can't accept them.

The Americans are the only people that we believe could offer that psychological guarantor that we need.

Mr. EILBERG. What powers would be exercised by the U.S.?

Mr. BARR. None. The only thing would be that we would have in our structure a Supreme Court and we believe that for the first eight or twelve years an American Supreme Court Judge chairing our Supreme Court as head of our Supreme Court would at least give to the people in this a psychological guarantee that they are working with impartiality.

Mr. EILBERG. Are you talking about this being shown by his deciding cases that are brought to the court?

Mr. BARR. Cases that are brought to the court. You see, the problem that would be is that, let's say, that they were all Protestants with maybe one or two Catholics on the Court and you had a Northern Catholic who took a constitutional issue up at the Supreme Court and it was found against him. Well, he would say well, that is because it is all Protestants that is up there and that is why they found against me.

Mr. EILBERG. And he would have the sole power to decide the cases?

Mr. BARR. Well, he would work in conjunction with the Supreme Court but at least at the end of the day you have an American Supreme Court judge give the decision of the Supreme Court and at least the counties can go in and say, "Well, it was an American that gave that decision, so therefore it was taken impartially."

Mr. EILBERG. Do you feel that the Protestant justices in that hypothetical situation would yield to the American justice and accept his ruling?

Mr. BARR. Well, we believe that the structure that we are putting forward is that the legislature is separate from the executive, and separate from the judicial, and that certainly they would accept it.

Mr. TYRRE. But we are not saying that the Supreme Court judge will have the overall say in that and make the decisions. What we are saying is—

Mr. BARR. That he will interpret the law and also work along with the rest of the judges on any particular case.

Mr. TYRRE. All we are saying is with him being there that will make it more impartial.

Mr. EILBERG. But would he have a vote?

Mr. BARR. Oh, yes, he would have a vote like anybody else.

Mr. EILBERG. But he would not be the supreme or sovereign?

Mr. BARR. Oh, no. We don't want to put him in that position. We just want him there to work in conjunction with the other Supreme Court judges. At the end of the day it will be seen as an impartial decision.

Mr. EILBERG. I am not sure I understand your use of the word "guarantor". It seems to me like you want someone to assist in rendering judicial decisions on constitutional questions.

Mr. BARR. What it means is that the American government becomes involved in that situation, that they have already committed themselves to assist in Northern Ireland to progress to proper politics without the interference of either Britain or Dublin. It means that by that involvement that they are prepared to send a Supreme Court judge here to act in that capacity that that will be their involvement.

And therefore, if there was an encroachment on our constitution by Dublin or London, then at least the American government would say, "well, we have an involvement there and we have given a guarantee that our Supreme Court judge will act impartially in constitutional matters and that if Britain or Dublin did try to interfere constitutionally—well, at least the American government would

then have a foot in Northern Ireland to be able to say to the two sovereign powers, "Come on."

Mr. FISH. Mr. Eilberg has indicated that this might be an extremely difficult matter to achieve because of the fact that you would be asking an American citizen to take an active role in foreign government. I am sure that this is barred by the Constitution at the present time. But the principle we understand and perhaps if you could take a minute. The American position would be a guarantor in the place of the existing guarantors which are Westminster and Dublin. So we know what we are replacing—could you just spend a minute describing how Dublin guarantees the Roman Catholics here and how Westminster guarantees the Protestants? And beyond that, how would they actually take the initiative both in London and Dublin to tell the people who listen to them to sit down and negotiate?

Mr. EILBERG. As far as this goes with the definition or the concept of guarantee or guarantor by the United States, I don't quite understand the role?

Mr. BARR. Guarantor may be a strong word. What we are saying is if you take this situation here of a Protestant judge making a decision and it reflects against the Catholic, the reaction is he did that because he was a Protestant. It is a tragedy that people think that way, but if you are talking about such an issue—if an independent state were formed, a constitutional issue went to the supreme court and there were two Catholic judges and two Protestant judges with the impartial judge sitting in that would be an impartial judgment. But outside of that, if it were three to one, three Protestants to one Catholic, or three Catholics to one Protestant, people would say it was because there were three Catholics or three Protestants.

Mr. EILBERG. All right. Now, the other obvious question from what you are saying now which is certainly what you have been saying, you are talking about only the judicial branch and the decisions by a Supreme Court. What about the legislative and the executive branch. Would there be any involvement by the United States?

Mr. BARR. Well, the biggest fear that the Protestant population has is a United Ireland. Anything that puts us on the road to a United Ireland has been totally opposed by the Protestants. So the British governments have given guarantees to the Protestant population that until the majority of the people in Northern Ireland want a united Ireland, they will remain part of the United Kingdom. That is the guarantee that comes from them in relation to the United Ireland.

On the other hand, the Dublin government continually gives guarantees to the Catholic population that they will guarantee that they will not be made second class citizens. Indeed, we have had cases whereby the Dublin government has gone to the Court of Human Rights, the European Court of Human Rights and what have you.

Indeed, in the early days of the troubles when Jack Lynch moved the Irish troops up to the border, he said that he was going to move—because of the threat the Irish troops were going to come up to protect the Republicans of Belfast. They believed that the Catholics were all going to be destroyed and murdered and that kind of thing. And they had given a guarantee that if this did happen that the Dublin troops would come into Belfast.

So these are the types of guarantees that have been given by the two sovereign powers.

Mr. REGIS. But your first step would be that the United States would use its good influence to tell England and Dublin to stay off and let you people decide?

Mr. BARR. No, let's take an example. Suppose there was independent Northern Ireland and that most of the people in Northern Ireland agreed that that was the path we should take and in about 30 years from now oil was discovered in Armagh and the British government said we should never have gotten out of there and the government said we should try to get in there again. What we want is someone from the outside that is strong enough to say, "All right, hands off."

It could be done through the United Nations as long as we had someone on our side in the United Nations that could push the case that these two sovereign powers are getting involved.

Mr. EILBERG. All right. Now, in that hypothetical case, how would the cause of the state of Northern Ireland be served? The Independent State? By having the judge on the Supreme Court?

Mr. TYRRE. John is talking about 30 years ahead. No. We are talking about having a judge in there for about 10 years. We think it is essential that in the transitional period that you have someone in there but for no more than 10 years until things settle down. We see him as an independent impartial arbitrator.

Mr. EILBERG. In the case that he is giving, I don't at this moment see this as a Supreme Court matter.

Mr. TYRRE. If we became totally independent, with no friends, no relations—no one who wants to take an interest in Northern Ireland, it means that we would have no one to talk to and people would want to come in and take over. We hope we will become part of NATO and part of Europe, totally independent.

We want to choose our friends carefully and we want to choose the right sort of friends. That is what it is all about. We can't see within the NATO and within the European context, we can't see anybody else in our part of the world.

Mr. EILBERG. I will say that while we must have a UN, it hasn't done very much and NATO has not, to my knowledge, been used yet even though we consider that it may be necessary some time. I just wonder how useful they would be in the proposal that you are setting forth? I just don't know.

Mr. TYRRE. The big danger always comes up in our community. People say once you start going for independence or breaking away from the U.K. or breaking away from Dublin you are going to turn Commie, you are going to turn Socialist and all the rest. This is the big thing that always comes up and we have this problem. People say, oh, you are going Communist, you are going Socialist. It is one of the propaganda things that has come against us.

What we are saying is while we remain in Europe tied up with United Nations in places like that there, that will make sure that we don't become Communist or we don't get any fancy people coming in offering us their services and saying we will look after you but here is the thing. We want to talk to anyone regarding this, that is why we are talking to people like you.

Mr. BARR. There is one thing the same about the Protestant and Catholic people in Northern Ireland is that they are anti-Communist. So, as Andy rightly says, you will get it from time to time that we are a bunch of Communists trying to forward this new revolutionary idea. It is just because of the fact that they have no argument against our independence. So they use all the emotional arguments all the time to save their own political situation.

CHAPTER IV.—VISIT TO CRUMLIN ROAD JAIL AND THE DAMIEN EASTWOOD CASE

On Tuesday, August 29, 1978, the delegation visited Crumlin Road Jail in Belfast. The visit was arranged by the U.S. Consul General Charles R. Stout.

While there, the delegation saw Frank McCann, an 18-year-old Irish national, a nephew of Mr. and Mrs. Joseph McCaffery of Philadelphia. McCann had been convicted for the possession of a firearm. A friend of McCann's who had been previously convicted of the possession of a firearm had stated to the police that McCann was present at the time of his arrest.

McCann denied that there had been any such incident. He was held at Castelreagh for 3 days where he was subjected to intense interrogation. He did not complain of any physical maltreatment, but did admit that he was in constant fear that the police would give him a "hiding."

The delegation also took the opportunity to visit Damien Eastwood, a naturalized U.S. citizen from California. Mr. Eastwood's case had been the subject of considerable Congressional interest, especially by Congressmen Biaggi, McCloskey, Burton, and Wolff. A newspaper account of the Eastwood case is included, as well as Department of State communications on charges and results of the trial in which Eastwood was acquitted.

Before meeting with the prisoners, the delegation met with Governor Kerr, the warden of the prison, with whom the delegation spent approximately one hour discussing the prison and its operation. Governor Kerr denied to the delegation that there were any prisoners "on the blanket" in Crumlin Jail.

Certain persons in the Catholic community later informed the delegation that there were, in fact, five prisoners on the blanket in the jail.

[From the San Francisco Chronicle, Feb. 14, 1978]

HINCKLE'S JOURNAL—BAY AREA MAN'S PLIGHT IN AN ULSTER JAIL

(By Warren Hinckle)

Much of the bad news from the North of Ireland these days seems to come out of the United States. There were recently the dispatches of the wire services from Philadelphia, relating the unholy experiences in Belfast of a 17-year-old American, Pearse Kerr, who was arrested without any charges, tortured, his broken wrist handcuffed behind his back, forced to sign a false confession, and left to rot for months in a Belfast gaol until the Philly papers started making embarrassing parallels between British justice and a fellow named Franz Kafka.

Today there is more unholy news from Belfast, this time out of the Bay Area. The source is the Stanford Business School. It is alumni news, although not your usual Stanford alumni news. This is the story the way the wire service paragrphers would write it datelined Stanford, California:

A Stanford Business School graduate and honor scholar is being held without bail in a Belfast prison, accused of possessing a bomb under suspicious circumstances.

His family and former classmates protesting his imprisonment have been told by Belfast authorities it will be between one year and 18 months before his case can be expected to come to trial.

The Office of Senator S. I. Hayakawa (Rep-Calif.) yesterday announced it was asking the U.S. State Department to investigate. This is the second incident in recent months of an American citizen being held in detention in Northern Ireland without trial.

Inprisoned in Crumlin Road Jail in Belfast is Damien Eastwood, 34, a 1975 graduate of Stanford Business School. He is an American citizen and a former resident of San Jose.

An honors graduate of San Jose State University, Eastwood held the post of visiting lecturer in business administration at Jordanstown University outside Belfast at the time of his arrest last December 22 at a police roadblock in the city.

At a hearing January 10 in Belfast bail was denied despite 40 character references on Eastwood's behalf from his Stanford Business School classmates, Bay Area Catholic clergymen and from prominent Belfast Protestants, including Eastwood's dean at Jordanstown University.

Under the Emergency Powers Act in Northern Ireland, Eastwood will be remanded in custody until a trial date this fall or in early 1979.

His wife, Peggy, also an American citizen, is remaining in Belfast with their three children, ages 9 to 14. She is said by family friends to be under severe nervous strain because of her husband's imprisonment. The family is reported to have received anonymous telephone threats.

Representatives of the National Council of Irish Americans and the Irish National Caucus met yesterday in Palo Alto with Representative Paul McCloskey (Rep-Calif.) to request a congressional investigation into an alleged link between Eastwood's imprisonment and FBI surveillance of Irish-American activists in the Bay area. Eastwood was active in local Irish causes when he lived in San Jose.

Eastwood's former Stanford classmates expressed disbelief at the charges and outrage at the Stanford man's being held without trial.

"Why, Ireland sounds just like Mexico," said Lawrence Lieberman, a 1975 classmate and now director of admissions at the business school. Jim Strahorn, another classmate, said: "Damien was too smart to do anything like that."

Eastwood has two brothers in the Bay Area. They have written to Representatives Norman Mineta and Fortney Stark asking the State Department to intervene with the British government to grant their brother a speedy trial.

Saturday I telephoned Eastwood's attorney in Belfast. His name is J. P. McGrory. He sounded like a gentle man and his voice came in great sighs across the transatlantic hookup as he described what has happened to the exalted British principles of British common law during the deteriorating British rule in Northern Ireland.

The European Court of Human Rights recently concluded that the British government was guilty of mere "inhuman and degrading treatment" of prisoners rather than "torture" per se. The semantics didn't make much difference to Pearce Kerr when they broke his wrist and handcuffed it behind his back.

"People frequently in this country now wait for trial up to a year—and often more," McGrory said in the slightly embarrassed manner of a man who believes in the rule of law and is watching it slowly sink in the quicksand of unreason.

"Almost anything can happen in this country now," the attorney sighed, despairing of explaining to an inquiring American how the burden of proof is reversed in Northern Ireland—if you are presumed to be a Republican, you are guilty until proven innocent.

Because of this and other facets of the British administration of the northern six counties the attorney did not care to go into over the phone, some 250 Irishmen sit in Long Kesh prison camp naked except for blankets over their shoulders to protest the political conditions of their imprisonment.

The imprisonment without trial of the American, Eastwood, is most distressing, the attorney said, because of the bizarre facts of his arrest and his unusual defense of duress—a defense the attorney believes would be effective if only the court would hear it.

Eastwood told Belfast police that two gunmen held his wife and two of his children hostage at his home while he was ordered to transport a bomb to a

suburban Belfast hotel and return home with proof the bomb had been planted before the gunmen would release his family.

The police took their time getting to his home, and the gunmen had gone. Eastwood's hysterical wife was interrogated for eight hours before she was freed. She confirmed every detail of his story, as did the children.

Eastwood was not politically active once he returned to his native Belfast in 1975, McGrory said. The Royal Ulster Constabulary did not even have a file on the American. But after his arrest police revealed they had files on Eastwood—FBI reports from the United States, detailing his activities giving speeches in the Bay Area on behalf of the Irish cause.

The Ulster interrogators spent days questioning Eastwood about speeches he gave at Stanford or his appearances on Bay Area television station "speak out" segments proclaiming against the English practices of internment and torture in Northern Ireland.

"Your FBI knew more about him than the Belfast police," the attorney cackled over the transatlantic wire. And all he did in America was give speeches.

A picture of FBI political surveillance and harassment of Bay Area Irish Americans was painted a gruesome green by Irish activists who gathered in Congressman McCloskey's Palo Alto office yesterday afternoon. The Irishmen said that the FBI was doing nothing less than the Ulster Protestant Establishment's dirty work in the United States. "Americans engaged in constitutionally protected activities here can end up in jail if they go back to Northern Ireland," said Michael McDermott, chairman of the California chapter of the Irish National Caucus. He was talking about Damien Eastwood.

Many Irish activists—and Eastwood's Belfast lawyer—are entertaining the proposition that Eastwood was fingered for some sort of a setup by British or Orange intelligence units because of the FBI reports on his campus speech-making here. If so, it wouldn't be the first time—it turned out a few years back that one of the biggest bank robberies in Irish history had been pulled off by two British intelligence agents, the Littlejohn brothers, who attempted to blame the Irish Republican Army.

Congressman McCloskey is a member of the Irish Ad Hoc Committee in Congress. He indicated he would urge it to hold hearings into instances of untoward FBI surveillance and harassment as cited by the locals yesterday.

The Irish defined "harassment" as being visited—or telephoned—by FBI agents two or three times a week. Margaret Thornton, a former official of East Bay Irish Northern Aid, which raises money to support the families of Republican prisoners in Northern jails, said that two weeks ago an FBI agent named Lund "came into my store flashing his badge" and then telephoned her three times at work and once at home at 7:30 in the morning.

"They come down the street here—you can always tell them—and sit outside in their cars," she said. "They're just trying to scare us."

Michael McLoughlin, an official of the National Council of Irish Americans, had previously complained of FBI harassment to the office of Senator Hayakawa. He was on the phone January 30 to James McKinney, Hayakawa's San Francisco field representative. McKinney was telling him that he had just received a letter from FBI director Clarence Kelley swearing up and down that the FBI was not practicing political surveillance against American Irish.

"Oh yeah," said McLoughlin, "Well why don't you tell that to the FBI man standing right here in my living room!"

McKinney acknowledged yesterday the rather awkward timing of the FBI's visit to McLoughlin. "It's a semantical problem as to what constitutes harassment," said the aide to the semantist-turned-senator. But he allowed the semantics involved were getting pretty hard to understand in terms of the U.S. Constitution. "Some of these things I'm frankly amazed by," he said. "I'm wondering if we've gotten the best possible answer from Mr. Kelley."

One might wonder. The FBI took it easier on the Irish under J. Edgar O'Hoover.

From: American Consul, Belfast.

To: Secretary of State, Washington, D.C.

Subject: New charges placed against Damien Eastwood:

Ref: Belfast 34 and previous.

1. The prosecution against Damien Eastwood (reftel) has now advanced to the point where the Office of the Director of Public Prosecutions (DPP) has presented his depositions to a preliminary hearing. As is usual in these cases, at the

hearing, the DPP presented new charges against Mr. Eastwood. The charges all stem from the same incident and are simply elaborations on the basic charge. The charges now pending against Mr. Eastwood are as follows:

A. That he, on the 21st day of December 1977, in the County of Down, unlawfully and maliciously caused by an explosive substance, namely a bomb, an explosion of a nature likely to endanger life or cause serious injury to property, contrary to section 2 of the Explosive Substance Act 1883.

B. That he, on the 21st day of December 1977, in the County of Down, unlawfully and maliciously had in his possession or under his control an explosive substance, namely a bomb, with intent by means thereof to endanger life or cause serious injury to property in the United Kingdom or to enable any other person so to do, contrary to section 3(1) (B) of the Explosive Substances Act 1883.

C. That he, on the 21st day of December 1977, in the County of Down, knowingly had in his possession or under his control certain explosive substances, namely a bomb, under such circumstances as to give rise to a reasonable suspicion that he did not have them in his possession or under his control for a lawful object, contrary to section 4 of the Explosive Substances Act 1883.

D. That he, on the 21st day of December 1977, in the County of Down, without lawful excuse, did attempt to destroy or damage by fire, property belonging to another, namely the Culloden Hotel, Holywood, intending to destroy or damage such property, or being reckless as to whether any such property would be destroyed or damaged, contrary to article 3(1) and (3) of the Criminal Damage (Northern Ireland) Order 1977.

2. The hearing itself was held on April 14 at the Holywood, Co. Down, magistrates court (the actual incident occurred in that jurisdiction so hearings are held there but the main trial will be held in Belfast). While an opportunity to answer the specific allegations was afforded Mr. Eastwood his attorney elected (as is the normal practice) not to argue the charges and the judge ruled that a "prima facie" case existed. Mr. Eastwood was committed for trial and the attorney now hopes and expects that the actual trial can be held before the end of June when the court recesses for the summer. (Only eight judges of the high court hear such cases in Northern Ireland there is a considerable back-log). If it does not come to trial before the recess the next possible trial date would be late September.

3. Now that the preliminary hearing has been held and Mr. Eastwood committed for trial regular redemand hearings are no longer required to renew the custody order. Persons awaiting trial are usually held at H.M. Prison the Maze and Mr. Eastwood is scheduled to be transferred to the Maze from H.M. Prison Belfast on April 15.

4. Consulate officer last visited Eastwood on April 10 and saw him briefly at April 14 hearing. Shortly before April 10 visit Mr. Eastwood had been involved in a fight at the prison the governor (warden) informed consulate officer that Mr. Eastwood was not to blame, and that the motive behind the fight had appeared to have been a minor disagreement and non-political). He suffered a cut under his left eye but received prompt medical attention (two stitches were required) and agreed with governor that no political motive was involved. Mr. Eastwood was otherwise well and seemed cheered that preliminary hearing indicated that DPP was "getting on with the case."

Subject: Daniel Eastwood acquitted.

1. Today September 15, in Belfast court after a four-day trial Lord Chief Justice Sir Robert Lowry acquitted American Citizen Damien Gerard Eastwood, of the four counts against him (reftel. In his findings the judge stated that once a claim of duress had been made by Eastwood, in order to arrive at a finding of guilt it was up to the crown prosecution to prove beyond a reasonable doubt that Eastwood was not acting under duress. Eastwood had been apprehended by police and admitted planting a bomb in a Belfast Hotel room on December 21, 1977. Since the crown had not proved beyond a reasonable doubt that Eastwood had acted freely, the judge found that he must therefore acquit him.

2. Eastwood earlier in his testimony before the court refused to answer questions which it appears might have incriminated Miss Linda Quigley, his co-defendant. After he had assured himself that Eastwood understood the law and what his refusal to testify implied, the judge found him in contempt of court. In his final sentencing statement, the judge decided not to take further judicial proceedings against Eastwood on the contempt matter. He found that, although

Eastwood had refused to answer particular questions for reasons known only to himself, Eastwood by his demeanor was respectful to the court.

3. Miss Linda Quigley, the 18-year-old Belfast woman who was apprehended with Eastwood, was found guilty of three of the four counts (reftel) and sentenced to three terms of four years imprisonment each, to be served concurrently. The difference in the findings was apparently related to the different defenses raised on behalf of each of the defendants. Where Eastwood from the moment of arrest cooperated with the police and immediately raised the issue of duress, the girl refused to cooperate or answer any questions put to her. Her sentence to four years (which with good behavior and time awaiting trial actually amounts to about 17 months.) is considered by local standards relatively light.

SIGNED, Stout.

CHAPTER V.—MEETING WITH ULSTER INDEPENDENCE ASSOCIATION

On August 29, 1978, the delegation met with representatives of the Ulster Independence Association at the Europa Hotel in Belfast.

This newly formed group seeks the same objective as that represented by the New Ulster Political Research Group. Its views on the methods for attaining an independent Ulster are broadly defined, mainly stop the violence, get opposing paramilitary groups talking to each other, seek a positive expression on the intent of the U.K. to get out, and conduct a referendum of all the people of Ulster.

It should be pointed out that the representatives who met with the delegation are the leaders of probably the most militant Loyalist para-military groups in Northern Ireland.

Excerpts of a transcription made from a taped recording of this meeting follows:

Mr. McKEAGUE. My name is John McKeague.

Mr. McCLURE. I am Sean McClure.

Mr. ALLPORT. I am George Allport.

Mr. REID. My name is Alec Reid.

Mr. WILSON. I am Desmond Wilson.

Mr. ALLPORT. I don't know how well briefed you are on the situations here, but on the 3rd of November last year I called into Washington, and I met Fred Burns O'Brien, and Mr. Brancato.

After a long conversation in the Georgetown Inn, I had suggested to them that perhaps it may be possible to have a peace forum, sponsored by Washington.

We have had invitations from other places, but there is a link and an aura about America among the Irish people. We feel that 200 years ago we helped you in your war of independence. It is time now you came and helped us to get our independence.

Mr. EILBERG. With whom did you speak in Washington?

Mr. O'BRIEN. Myself and Brancato, Mr. Biaggi's man.

Mr. ALLPORT. Up to a few years ago we were all ardent Loyalists. And a few years ago if anybody had said to me that I would be advocating independence for Northern Ireland, I would have told them that it was absolutely impossible. But we have realized that the problem in Northern Ireland, chiefly is the bomb and the bullet.

The para-militaries are the men who can control the situation in Northern Ireland. The politicians have been trying for years and haven't succeeded.

In 1972 I was the chosen Unionist candidate just before our democratic rights were taken from us. But I now say that we here today are not advocating breaking the link. Westminster has already broken the link.

Westminster has taken our democratic rights from us. Westminster has withdrawn the Queen's representative, the Governor's office, withdrawn our Privy Councillors. They have introduced a system of PR into Northern Ireland dissimilar to any system that they have in the rest of the UK, but similar to Southern Ireland.

Ten years ago Wilson said there will be a united Ireland in 15. A united Ireland can come in 15 years, but it is not going to solve the problem.

Today the members of the IRA and their cohorts, have been aiming and gearing up for a united Ireland. If that came about, you would have 70,000 to 80,000 Loyalist para-militaries who will be the troublemakers for generations to come. If we still maintain the British link you are going to have the nationalist IRA folk continuing their trouble.

What is the solution? The IRA have repeatedly said "Our fight is not with the Northern Irishmen, our fight is with the British." Okay, if Northern Irishmen govern Northern Ireland, and if Southern Irishmen govern Southern Ireland, then the two sovereign states can work together for the benefit of the whole country.

To us, there is no other solution than a negotiated independence. Today, as a Loyalist, I would not sit down on any Council of Ireland, because I would be a small boy being kicked in the pants by Westminster, told what I can do and what I can't do.

As a sovereign state, we could work together, we could work with our friends and neighbors down south, for the betterment of the whole country. That just very briefly is, as I see it, the nub of the whole problem.

Two or three years ago, the people in this room, and the people that you have met, and the people you will meet, would only have spoken to one another down the barrel of a gun. But we are sitting down and talking to these people. We have intermediaries. We have friends here who are bringing us together. Both sides are talking together. But we still haven't been able to come to the point when we can show something to the people of Northern Ireland, which is peace.

The politicians, for their own ends—forgive me, sir, you being a politician. The politicians for their own ends, many of them, don't want peace. They can't solve the problem.

Only the para-militaries can solve the problem of Ireland.

Mr. McCLURE. The para-militaries can solve it. I am a Ulster Loyalist, and my credentials are I was one of the founders of one of the biggest para-military organizations. I was their leader for quite a while.

Try to remember Vanguard, try to remember the Vanguard political party. I was one of the striking workers that tore down the executive which the English imposed on us.

I was born a Unionist, born a Protestant, and born with the link tied around my umbilical cord to my mother, you see. And we have decided now that the link that I have along with others, must go, for the reasons that George has given. I believe that if London steps out of the picture, and if Dublin steps out of the picture, and they both let us people communicate, like Des and Alec here, across the board, and let us have dialogue, and let us govern ourselves for a while, as George says. Who knows if in another year's time, whenever the two parts of the country are going well, there may be unification. Maybe it won't be as the old Republican sod, or as the old Loyalist sod, but maybe a different type of unification, such as you have in your own great country.

I mean, the United States of Two, to say what will and what won't take place. Our politicians, I am sorry George classified you with our politicians, because you know, you are politicians. The crop which we have got at the moment are not politicians. They are very dim excuses. They are rabble-rousers, and the only things that they can come up with is this old tune: "Divide, Hate, Divide."

As I told you earlier on, as soon as anyone steps forward, particularly people like John McKeague and myself, who have been very much involved in para-military organizations, as soon as we come forward with a scheme whereby we are going to talk to Catholics, or we are going to talk to Republicans, or we are going to talk to various other people, they pigeon-hole us. They say "No, they are not really looking for a solution, they are now out and out Republicans."

Fresh thought seems impossible for them to digest. Yesterday, at the demonstration, they called George and I and John snakes in the grass. You know, because we deign to say "There may be another way."

We are not saying that our way is right. All we are saying is "For God's sake look at it, there may be just another way." I favor American intervention for many reasons. I am not implying destructive intervention. I mean collective intervention for the purpose of seeking knowledge.

Mr. EILBERG. I don't want to interrupt prematurely, but we have a number of questions, of course. When you say "American intervention" I really would like you to spell that out.

Mr. McCLURE. From the point of view that you are willing to come and listen, and hear what we have got to say.

Mr. ALLPORT. I wouldn't use the word "intervention."

Mr. McCLURE. No, fair enough.

Mr. ALLPORT. "Intervention," definitely not. That is a word which is out.

You are not interfering in our affairs. I would look upon you as being referees to try to help us solve our problems.

Mr. McCLURE. It is very hard for me at times to use political terms. I am not a politician. So therefore the word "intervention" probably was not the right term. I think it is important that you know that I only mean by it that you are willing to come here and listen to an idea.

Mr. EILBERG. Mr. Allport referred to us as referees. In what areas would the referee operate?

Mr. ALLPORT. How I looked on it, how I put it to Fred and Bob when I saw them in Washington was as follows. I would hope that somebody, either you, or some other country; we have had an invitation from a Central European country, but it wouldn't have the same impact that America would have, would try to bring together the warring factions, the para-militaries, the people who are keeping the trouble going in Northern Ireland.

You could meet the Loyalist group on one day, and hear all of their points. Let them put everything before your committee. You could then meet the other people the following morning, or the following afternoon. Digest what each says, and then try and bring us together, see if we can solve one or two knotty problems.

Now, we are very close to solving our problems, but the stumbling block at the moment between the Loyalist group and the Irish Republican Army group is that we want independence, they are opting for federation.

Mr. McCLURE. Well, purely and simply, having been a long active member of various Loyalist organizations, I am convinced at this moment that the way forward is no longer by the bullet and gun.

I have had various talks with other members of opposing political factions in Northern Ireland, and we have had these talks in Northern Ireland with them.

Mr. EILBERG. Let me ask this, and this really applies to both of you: you have stated your opinion of politicians, which does not bother me individually, but when meetings are held they have to be held with leaders, or people who have constituencies, or who are representative. Who do you represent? You have indicated your general opinion of what is needed, but who else do you speak for, besides yourself? Not to be critical or argumentative, but this is important for us to know.

Mr. ALLPORT. Who else do I speak for? I can give you some of my history if that would assist you. I have been a prominent member of the Unionist party.

Mr. EILBERG. The problem is that if and when such a meeting were to be held, and ideas were to be sorted out, I am sure the leader or host would expect that any ideas that materialize would be carried back to Northern Ireland and carried out. How could anyone here, without being in some representative capacity, assure that the plan would work?

Mr. ALLPORT. Well, the Ulster Independence Association represents many organizations, chiefly paramilitary organizations, and we speak on their behalf.

Mr. EILBERG. How much of the Protestant community does that represent?

Mr. McCLURE. I agree with George, but there is a stage we have reached in Northern Ireland, and that is the realization that the old regimes of both sides of the curtain can no longer bring a solution to the Northern Ireland problem. All right, who do we represent?

In the past, I and other people here have been on the streets representing the Loyalist cause for Northern Ireland. We did then what we thought was right to stave off a situation, which as we, in our memories of it, was preventing a take-over by the Southern Irish Republic.

We found that people that should have been standing with us, such as the British government, did not do this. We were getting frustrated and alarmed, as in the olden days we would have been the colonials doing England's work.

We were finding that they no longer wanted us as colonials, and they wanted to push us into an all Ireland republic, which is completely repugnant to any Loyalist of Northern Ireland.

Now, at the same time, you have the Republican element in Northern Ireland, which is not all IRA, but the IRA was able to express a lot of their opposition to the British regime, as they would call it, in Northern Ireland.

The IRA will not, as it is constituted today, the provos, will not tolerate the conservative liberal government of the Dail. They are equally as opposed to it as they are to the British occupation of Northern Ireland, as they would call it.

When we look at this situation, we find that in the earlier days of our history the Dail would not have accepted British rule. But now that they have it they are willing to work with Britain, and the economic structures and all of the rest of the structures there are that are necessary for the well-being of the country.

Now we find that England will not make a declaration to the Northern Ireland people. As George has already outlined, they have taken away the Governor, and broken the link. They have given us a new electoral system. They have done everything in the opposite direction as to what they would have in the United Kingdom, yet they still say that we are part of the United Kingdom.

Now, we have made overtures to them to make us an integral part of the United Kingdom, and immediately they say "No." Then we ask ourselves why? Is our citizenship British? Are we British or are we not? For the first time the big question mark was raised. Who are we? Does England want us or does she not?

Each time we approach this question, the Secretary of State here, or any other leading Conservative will state, "If the solution can be reached in Northern Ireland by the majority of the people we will abide by that." That sounds fair enough.

We have had elections here, five of them. The majority have said, "We don't want an Irish Republic, we don't want anything other than the way we are doing it now." But yet the British government will not act accordingly.

So, therefore, they are saying one thing and doing another. What we are now saying is we have crossed the divide. We have said "The bomb and the bullet is not the answer to Northern Ireland's question; it must be a political solution."

And we have had intermediaries on the other side of the warring groups, such as the provos and the IRA, and we find that there is a lot of common ground that we can reach.

But the main question is whether the British will withdraw, and whether the Irish government will withdraw. We have two statements of intention that we ask for, one from the British government, and one from the Irish government that is to leave the people of Northern Ireland alone to decide their own future by referendum.

At the same time we are calling for a new constitution and a new bill of rights. We are being so radical that we are going to sweep everything of the past to the side, and say, "Look, a new situation must develop here." Now, we don't want to change masters. We don't want to come under American influence and government.

What we are saying to people who have listened to us is, "we need help." We need help to find out really, whether it is possible. Because we don't want to jump out of the frying pan into the fire.

In all our discussions with different people and, different countries, we find that there is a possibility of reaching a situation where Northern Ireland could become independent. Not tomorrow, not next year, or maybe in five years, but over a negotiated term with Great Britain and with the Southern government, with also the consent which must first of all be built up. This is what we are mainly trying to do. We are trying to build up within the community here. We are trying to build up trust first of all, trust that we are going to live together with one another. We are going to set up institutions which will alleviate all of the old crisis, and say, "Look, here is a new system, complete new electoral system, complete new everything. Now here is an alternative."

Now, the main stumbling block at the moment between the provisional IRA, the Republicans, and ourselves, is how that form of government can be set up. The provos at the moment would not agree to negotiated independence, and we would not at this moment agree with complete Federalism.

So therefore there is a stumbling block here, but it is not unsurpassable. That is because once we would get the two statements of intentions first: that the British government will withdraw, and the other statement from the Dublin government that the Roman Catholic population in Northern Ireland, can't run to Dublin for help. The answer is that they would have to look to each other. Then who could the two sides look to for help?

Therefore we would start out on a new page. The politicians of this particular part of the country cannot solve the problem, have no intention of solving it, and just want to take the situation as it is now riding into an all-Ireland Republic, possibly in about 30 years, which will eventually come to a civil war and a blood bath.

What we are saying out of this is that we want now to get the groupings all together so that in the future there is no Irishman, no matter whether he comes from North or South, who could say "The Americans did that to us, or the English did that to us or the Austrians did that to us." We have got to reach that situation ourselves in Ireland, both North and South.

Mr. EILBERG. Is there any machinery available now to provide for a true referendum?

Mr. McCLURE. Yes, there is, if the British government would follow what we are trying to do, and give it a chance. They have tried everything else and it has failed.

Mr. EILBERG. Well, under the law as it exists now can there be such a referendum.

Mr. McCLURE. Yes.

Mr. EILBERG. The question would simply be put on the ballot?

Mr. McCLURE. Yes, then, all parties must agree that the decision of the ballot would be legal and binding. The British government would have to agree that they would abide by the decision even if they disapproved of it.

Now, the politicians are the main stumbling block today in Northern Ireland. They are so divided among themselves that one politician will not give any credence to the other. If it comes from Jerry Fitt, immediately, they will say "Oh, who would listen to Jerry Fitt." If it comes from Ian Paisley, they will say "Who would listen to Ian Paisley." If it comes from Harry West, they absolutely laugh.

That is how we are today.

Mr. EILBERG. Let me ask you this: what is there to indicate that Great Britain is prepared in anyway to give up its position in Northern Ireland?

Mr. McCLURE. Great Britain has been preparing us for some time, and one has to study it. It would take quite a lengthy discussion, to be sure of all these things.

Mr. EILBERG. Let me interrupt by saying we have only been here a period of days, and it appears to me that there is something here close to a state of war. It seems to me that Britain has been through quite a lot of trouble and expense to have a desire to withdraw.

Mr. ALLPORT. Well, Britain can't lose face at the moment by withdrawing, but she has prepared every country that she has promised she would never withdraw from for withdrawal, and has eventually withdrawn. We are about the last people. We have seen indications of this.

When I was the official candidate, I was lobbying in Westminster in 1971, and without exception any MP I spoke to, they said to me "Is there any danger of a Protestant backlash if we push these people too far?" My answer was yes, and it was proved in 1972, that there would be a Loyalist backlash. Britain was preparing us to be put into a 32 county republic. Wilson's 15 year plan, has another eight or nine years to run.

And I will state quite categorically, that there are more Roman Catholic school children in Northern Ireland today than there are Protestant school children. It is bound to be, but it is not going to bring peace. This is the problem. If we go into a 32 county republic, you are going to have between 70,000 and 80,000 Loyalist paramilitaries who are just standing by. They would be the trouble-makers in the northeastern corner for generations to come.

It is only independence, with all groups working together, that can bring us together: Northern Irishmen running Northern Ireland.

Mr. McCLURE. If we take some of the leading politicians, say, ten years ago, who were shouting "Ulster Forever et cetera, et cetera." They said "We will do this, with the gun and the bullet", and they made statements such as "Shoot to kill". At that time the Loyalist young men, all Ulsters, subscribed to that. That was the leadership, that was the official Unionist.

These politicians have used young men of Ulster for their particular causes which have not gained them success. None of the paramilitaries which have been used for the express wishes of certain politicians and for the main political groupings have refused to answer their requests and have said to themselves, "We will find a political solution to the problem."

And from the paramilitaries of Ulster came out the first group of which I think you have read: Ulster can survive. This group started the ball rolling. Even in the Provo camp they were interested in it. Now, we have gone on from there reaching points of agreement that, yes, the paramilitaries can

stop fighting and fighting each other, but the politicians must also accept the situation that they cannot solve the problem themselves.

The paramilitaries cannot solve it themselves, so we must find some political solution that can bring both paramilitaries and politicians together on a genuine solution for the problem. Not something that is going to happen for ten years that will solve those people's consciences or something that will solve 20 years of the problem for someone else. It must be a problem solved to the satisfaction of the largest majority in Ireland both North and South and that is where we say of the constitutions that would be selected. That we just guarantee these things to the people.

Now, that is all right saying "guarantees," but who and what is a guarantee? So, therefore, what we have been trying to do over these past two years is to build up a trust so what we say can be accepted. Now, Desmond Wilson here and me met once at a roundtable and I was one of his most bitter opponents, but we have come now to see the situation in reality that we are just not as far from one another as possibly our politicians would like us to be.

And the crux of the whole problem at the moment is how to get our politicians to accept the fact that a solution must be found and not only to their satisfaction but to the satisfaction of all of the people of Ulster.

Mr. WILSON. Mr. Elberg, you asked a very relevant question which nobody really answered which was "who do you represent?" and it was bypassed. George then showed where he represents people called the Ulster Independence Association. He is the leader of it, John and I are deputy leaders of it. As for me, I represent another trade union which is a paramilitary trade union. I am still a member of the Ulster Loyalists Central Coordinating Committee which is the main body for coordinating and controlling all of the Loyalist paramilitaries in Ulster. I am still a member of that and so is John.

So, we refer to it affectionately as our trade union. The next question you intimated was who do we speak for and what section of the community. That is a fair question. Do we represent the people. Well, in the words of your own Cyrus Vance and Mr. Andrew Young and Dr. Owens in the Rhodesian situation they say that the paramilitaries must sit down to look for a solution, the guerillas, the terrorists and they say there can be no solution in Rhodesia until they hear from these people. I don't mean to say that it is necessary to take everything they say into account. But they must hear from the guerillas in Rhodesia otherwise there will be definitely no settlement. This is Andrew Young's and Dr. Owens interpretation of a peaceful settlement in Rhodesia.

What we are saying as representatives and spokesmen for the numbers of Ulster Loyalists paramilitary organizations what we are saying is that the Loyalist representatives have what they think may be a new solution.

Mr. FISH. This is most encouraging.

I think Josh is interested in how broadly representative we are here because of the importance of the issue, and that it should be recognized by Catholics in the United States that this is the most significant change and the best possibility of progress that there has been for some time.

Now, we want to know where do we go from here and who is running things. I think George said it that you are close to solving your problems but that you have this loggerhead of Independence versus Federation. Well, it would seem to me that there is a third element: Independence, Federation and the remaining people that feel strongly about union, and link.

Mr. WILSON. The link—that's right.

Mr. FISH. Now, isn't that still the most cohesive force in the country?

Mr. ALLPORT. It is the loggerhead at the moment undoubtedly. But if Britain will state its intent to withdraw from Northern Ireland—

Mr. McCLURE. Or, George, her intent to stay in Northern Ireland.

Mr. ALLPORT. Her intent to stay in Northern Ireland doesn't count because in due course what is going to happen is this, the words of the politicians—

Mr. McCLURE. Excuse me, George, you miss the point. John was asking the British government to pick up the dollar one way or the other.

Mr. ALLPORT. Oh, yes, but the answer to that quite clearly is that, in 1971, 27 percent of the people in the U.K. said, yes, Britain should get out. The last time it was about 63 percent, get out. The next will be over 80 percent get out and when it comes to that the British politicians, no matter what their words, or what their policies are, they will say, "Sorry, chums. We represent the people and if the people tell us to get out, then we have no alternative but to get out."

And, they will get out. They have done it in every other country. They will get out. But if we can come back, and if Britain can then show its intent that in due course Britain is prepared to give us our independence, then the referendum can be as to whether the people want a Federal system or whether they want a system of independence and a negotiated independence for Northern Ireland. That could be the referendum. That would have to be chosen by the people of Northern Ireland.

Mr. FISH. Tell me now, if today with the two to one majority of Protestants, I think basically you started off with the proposition that most of them were for unionism.

Mr. ALLPORT. Yes.

Mr. FISH. In the recent history. This defection, this dissolution in public opinion is represented by the formation of your Ulster Independence Association. How deeply have you cut into the population?

Mr. ALLPORT. We are cutting in about 10, 15 percent.

Mr. FISH. Ten, fifteen percent?

Mr. McKEAGUE. A recent BBC poll taken showed that 16 percent of the Ulster people favored independence. You are talking about 16 minus percent, 12 to 16 percent of people who favor independence at this stage.

Mr. ALLPORT. Now, this couldn't have happened in '71. And it is gradually growing and if through independence we can bring peace—

Mr. FISH. Of course, you have to sell that proposition first to get your consensus, don't you?

Mr. McCLURE. Yes, but we must first of all have our homework done among ourselves.

Mr. FISH. Right.

Mr. McCLURE. To find out if we can come to that position and I think—

Mr. FISH. How close are you working with the New Ulster Political Research Group?

The Ulster Defense Association has recently formed this New Ulster Political Research Group.

Mr. McCLURE. Oh, that is an offshot of the UDA?

Mr. FISH. Yes.

Mr. McCLURE. Oh, I thought it was a new, it just recently formed?

Mr. FISH. Yes, but I mean I have heard from them so much of what I have heard here. Your thinking is right on the track.

Mr. McCLURE. Right.

Mr. FISH. Parallel.

Mr. McCLURE. What is happening there, UDA was part of the original document which started all of this going and they unfortunately allowed Ian Paisley to disrupt the ULCCC and he took them out to form the last strike that went on. We haven't gotten back on the same terms with them because of the mistrust that the UDA might again be led by Ian Paisley up a garden path. We have made a resolution that we will be allowing no politician of the established groups, to take the paramilitaries on to the streets again at their behest which Paisley did no less than, what, nine months ago.

Mr. WILSON. You see I go back to this pigeonholing again. Were you to establish yourselves or attach yourself to a known political group, i.e., if you were to attach yourself to the West Orange Unionist Party then you immediately become identified with Martin Smith and the Orange Order because it is synonymous. The Unionist Party and West is synonymous with the Orange Order. So we cannot, in fact we will not, tie ourselves to any what I would term bigotted organization.

So, we are going to talk in the context of the people of Northern Ireland. We must talk in the context of everybody in Northern Ireland.

Mr. ALLPORT. We are proposing a radical solution to the Northern Irish problem.

And in a way, Congressman, I agree with you, entirely that the Unionist leaders have the majority of the people behind them at the present moment because they have no other way to go. But they haven't succeeded over the past 16 years.

Mr. McCLURE. Before you go, can I say just this much. Now, you talk about bigotted groupings. What I am saying as well is that everybody is entitled to belong to whatever group they want to belong to and I would hope that in this new society which we are speaking of or which we will get in Ulster that we

will have many people from many political parties and come from all various groups, the ultimate will be that the thing will be controlled by the majority, the democratic majority of the people. This is what I am saying. That just because one happens to be a Unionist and an Orangeman doesn't necessarily mean that that is right, and if on happens to be a Catholic and a member of the Hibernians that that is right.

What I am saying is that both sides can have a fair amount of right in them, but not necessarily the right answer.

Mr. WILSON. I suppose our involvement in this comes from the fact that we are closely involved in the troubles. Now, we have been closely involved here since the troubles began ten years ago in the sense that we live in areas that are badly affected by the troubles and we have seen what they mean in practice to people. This is my impression or personal viewpoint. I mean we were living in the midst of this destruction and suffering and death, and we felt that very little was being done.

CHAPTER VI.—MEETING WITH LORD CHIEF JUSTICE SIR ROBERT LOWRY

The following three court opinions were selected among a number submitted to the delegation by the Lord Chief Justice Lowry to illustrate the points made by him during the meeting held in his office in Belfast on Wednesday, August 30, 1978.

The Chief Justice had stipulated prior to the meeting that it was to be held "off the record" to preserve the integrity of the courts.

He discussed in detail the procedures of the Diplock courts and emphasized the necessity for the establishment of the one-judge-no-jury courts citing as reasons the arguments set forth in the Diplock report.

He went to great length to stress the impartiality of the Courts in spite of the hostile atmosphere in the area. He also sought to convince the delegation that forced statements or confessions were inadmissible in any proceedings against defendants being tried under the Northern Ireland (Emergency Provisions) Acts.

REG. V. MARTIN JOSEPH COREY, WILLIAM FRANCIS MEEHAN, BRIAN LENNON,
AND PETER ANTHONY McVEIGH

JUDGMENT OF THE LORD CHIEF JUSTICE

Delivered at the Belfast City Commission on 6th December, 1973.—
Lowry, L.C.J.

The four accused were each charged with four offences: (1) the murder of Constable Raymond Wylie; (2) the murder of Constable Ronald McAuley; (3) the possession of firearms with intent by means thereof to endanger life or to enable another person to do so, and (4) the possession of firearms in suspicious circumstances. All pleaded not guilty when arraigned but at the beginning of the second day of the trial counsel for the accused Corey, Meehan and McVeigh informed me that those accused had withdrawn instructions from their legal advisers and those accused did not participate further. The accused Lennon continued to be defended by counsel, Mr. Nicholson, Q.C., and Mr. McKay.

In approaching the evidence I had regard to the burden and standard of proof including proof of intention and knowledge where those were relevant. It was necessary to have regard to the circumstances in which all oral and written statements alleged to have been made by the accused were made in order to assess the value of what was said and in particular it was necessary for me to remind myself that any statement which an accused is proved to have made out of court, whether oral or written, is evidence only against the maker and not against the co-accused. It is right to consider the evidence as a whole but in finally considering guilt or innocence one must look at each accused and each charge separately.

The accused Lennon has put his character in issue by proving his clear record and therefore his previous good character must be taken into account in his favour when assessing guilt or innocence. A good character previous to the time of the alleged offences varies in importance in different situations but nonetheless it must be regarded.

The Crown case was made up of (1) what I may call background and formal evidence, setting the scene, tracing exhibits through various stages and identifying persons: (2) the physical signs noted at the scene of the crime: (3) the scientific evidence, and (4) the oral and written statements of each of the accused. I would commend the painstaking investigation made at the scene and the clarity of the maps and photographs.

By reference to the first three branches of the evidence it can be established that the deceased constables had undertaken a routine patrol on 27th February, 1973, and were ambushed at Cranagh Bridge near Aghalee, County Antrim. They approached from the south and stopped the car short of the bridge. Since the car's reversing lights were on shortly after the ambush it appears that the patrol slightly overshot a lane on their right which was at the south end of a ruined house and in which a stolen Ford Corsair was parked.

The constables got out; McAuley, the driver, being on the right and Wylie on the left. They were found, Wylie dead in the field on his left of the road and McAuley badly wounded beside a pillar at the entrance to the lane. The discovery of 44 spent rounds showed that an Armalite .223 rifle had been fired from the lane; a weapon of .45 calibre from the north west corner of the house and a 9 mm. weapon from a gap in the wall of the bridge.

Scientific evidence showed that Constable McAuley, who was taken to hospital and died on 25th March, and Constable Wylie had both been shot by the Armalite. As stated, all the accused made oral and written statements about their alleged part in the crime and Corey, Meehan and McVeigh drew rough sketches when interviewed by the police. Corey said that they—he used the word “we” but mentioned no names—got orders from the O.C. on the 26th February that there was a job “for us” the next morning and that on the next day they were brought to a silver grey Corsair which had a Thompson (.45), an Armalite and a 9 mm. short arm on the back seat.

He then said: “The O.C. told us to go out the road and take a shot at the police.” Corey took the Thompson. He described partially at least the ambush including his own firing of up to 16 rounds at what must have been Constable McAuley from a position which corresponded to the place where the .45 cartridge cases were found. As with the other statements I am concentrating my attention on what the accused has said about himself.

Meehan said the operation as far as he was led to believe was to take the weapons off the policemen. He, too, identified his transport as a silver grey Corsair and said he took the Armalite. He also said “Martin was to drive the stolen car out in front of it (the police car) and me and the other fellow was going to disarm them and make off with their guns.” The police car came from the opposite direction to that which they expected and they heard a car door slamming.

He then described without any great detail his own firing at Constable McAuley and referred to Constable Wylie's dive for cover on the passenger side. He himself fired from the lane. He concluded: “It wasn't the object of going out to shoot a policeman. We didn't know that we had hit any of the policemen until we got into Monaghan and heard the news.”

McVeigh said he met up with Martin Corey and a Free State fellow. “Corey told us that there was two policemen using the Aghagallon Road every day. Corey knew that area, the hump back bridge and all and he knew the best spot to hit them. The three of us decided to do the job on Tuesday. The job was to ambush the police.” He himself took a 9 mm. revolver. He described himself firing at the police car from the bridge and the other two men firing at the same time.

These three defendants made no case and my conclusions from the facts in evidence (with which I have considered only the statement of each man in turn when considering his case) is that they planned an ambush in advance intending to kill such police as might arrive at the Cranagh Bridge in the course of their patrol. Apart from that I am satisfied that when the police arrived they made a concerted attack upon them intending to kill or inflict grievous bodily harm. Having reached these conclusions of fact I am satisfied beyond reasonable doubt that each of the three is guilty on all four counts.

The case of the accused Lennon is different in that he was not at the scene of the shooting. The other evidence, omitting all reference to the statements of Corey, Meehan and McVeigh, proves against Lennon that three persons made a lethal attack on the police at Cranagh Bridge I then come to the oral and written admissions of Lennon.

Mr. Nicholson cross-examined the police officers who had interviewed Lennon on the theme that they had worn him down by prolonged and repeated questioning, alternate threats and kindness, subterfuge and suggestions and leading questions designed to break his resistance and extract a confession. He then, without alleging torture or inhuman or degrading treatment, as mentioned in

section 6 of the Northern Ireland (Emergency Provisions) Act, 1973, submitted that the Court had a discretion to exclude from evidence statements made by the accused even if they could not be brought into the expressly forbidden category.

I agree with this general proposition since there is always a discretion, unless it is expressly removed, to exclude any admissible evidence on the ground that (by reason of any given circumstance) its prejudicial effect outweighs its probative value and that to admit the evidence would not be in the interests of justice.

Section 6, of course, has materially altered the law as to admissibility of statements by singling out torture and inhuman and degrading treatment. This is clear from the fact that such things have always made for the exclusion of an accused's statement since they deprive it of its voluntary character. Accordingly, section 6(2) would merely be a statement of the obvious if it did not, in conjunction with section 6(1) render admissible much that previously must have been excluded. There is no need now to satisfy the judge that a statement is voluntary in the sometimes technical sense which that word has acquired in relation to criminal trials.

I refused Mr. Nicholson's application to exclude Lennon's oral and written admissions, since I had heard nothing up to the time of his submission which would have led me to do so. No further evidence has been given by or on behalf of the accused to fill the gap and I can now say that I accept the evidence of Inspectors Mooney, Harris and Hylands and am satisfied that the suggestions made to them by counsel, who on his instructions put his points quite properly, are unfounded. The slight discrepancies between them are no more than one would expect from honest witnesses who have not concocted their evidence. Furthermore, if Lennon's statement had been procured in the manner alleged, I should have expected it to link him clearly with a murder plan and not merely with an alleged hold-up.

The written signed statement of the accused Lennon was as follows:—

"I am a volunteer in the Provisional I.R.A. On Monday night, that was the night before the policemen were shot, Martin Corey and a fellow I didn't know at that time came to my house. I heard his name two days later as Bill Meehan. They told me there was a job on for Tuesday. They told me that I would have to do the scout car for them on the Whitehall Road. I knew where the Whitehall Road was as I had been working at McConville's bungalow six weeks earlier along with Peter McVeigh. I had been working at it on that Monday. I saw the police car a couple of days going up and down past during the time I was working on it. On the Monday night they told me what the job would be and that was that I would have to scout them out to Whitehall Corner and I then was to turn my car round and drive back to the garage. I was to sit there until they came past in their car and then I was to take off and lead the way into the Kilwilkie Estate. When they were in my house they discussed how they were going to stop the police car on the Whitehall Road but I didn't know whereabouts it was. The next morning I went up to the Kilwilkie Flats. When I drove down in my car I saw a Ford Corsair. I think it was a Corsair—sitting in a cul de sac with three men in it. That was Martin Corey, Peter McVeigh and the other fellow I later was told was Meehan. Martin was driving and Meehan was in the front with him. I drove down to the bottom of the cul de sac and turned alongside their car. One of the boys gave me some sort of a signal and started up their car. I took off in mine out of Kilwilkie, through Wimpey and on to the Aghagallon Road. They were 60-70 yards behind me. I drove on out to Whitehall Corner and then I turned the car round and they turned down left down a road that takes them over a canal. I continued on back to the garage that was the Kilmore Garage and parked in the front of the garage. I got out of the car and went and seen the owner of the garage to see if he could fix my brakes. He said he was very busy and to hold on and see if he could take a look at them later on. I waited to sometime near four o'clock and I went and seen the garage owner and told him I was going to leave the car and asked him if he could get me a lift in and he went and saw a young mechanic and he ran me into Lurgan in his own car, a Corsair. He had ginger hair. Martin and the other two never turned up. Two days later, I think it was, I saw McVeigh. I can't remember what we talked about. We could have talked about the shooting but I can't remember. I think one of them was going to walk out in front of it to get the police car stopped. I thought they were going to take the weapons off the policemen."

The defense case for Lennon, apart from the attempt to impugn the statements, was that he had driven his car, which was taxed, out to the Kilmore Garage to have the brakes fixed, having failed to get the job done at a garage in Lurgan. He had arrived about 2 p.m. and waited about until the owner, Mr. Fegan, came back from lunch. Mr. Fegan was busy and said if he would like to wait he would see what he could do later. About four o'clock Lennon tried again and Mr. Fegan said the car could not be attended to that day and got his mechanic to drive Lennon back to Lurgan while his car remained at Kilmore Garage.

Two days later Lennon had himself driven out by a friend and took the car away. Some of these facts were elicited in cross-examination and some proved by two witnesses (Mr. Lavery who worked for his brother in the Lurgan garage and Mr. McAlinden who drove Lennon to the garage on the 1st March), and Mr. Nicholson asked me to infer that Lennon's presence at the garage was entirely innocent and had not come about in the manner confessed to by Lennon in his statement.

Mr. Nicholson has pressed the point that not only at four o'clock, when admittedly his companions may be considered unlikely to have turned up, but shortly after he reached Kilmore Garage Lennon was asking the proprietor to repair his brakes, which meant that he was taking the obvious chance that his car might be immobilised at the very moment his services as a scout, if the accusation against him were right, would be needed again.

In my opinion, attractively though the argument was put, the point cannot stand up against Lennon's unequivocal oral and signed confessions that he acted as a scout on the outward journey. If it is the right inference that he was willing to take the risk of being immobilised it may show that he was not a whole-hearted conspirator and reinforce the doubts which could be entertained about his guilt on the first two counts.

The accused Lennon, although not giving evidence, made an unsworn statement denying his guilt and explaining that he made his earlier statements under severe pressure and in fear of internment. He acquitted the police of physical ill treatment and explained that he had a reason binding his conscience for not giving evidence.

At the conclusion of the Crown case Mr. Nicholson submitted that I should direct myself that the accused had no case to answer on the murder counts on the grounds that I could not be satisfied beyond reasonable doubt that Lennon knew that murder was intended or even foresaw that grievous bodily harm at least was certain or probable and was reckless whether it did occur. I acceded to this application not because I had any doubt as to the reliability of the admissions made by the accused but because the strict standard of proof insisted on in connection with a murder charge caused me to hold the view that I could not as the tribunal of fact be satisfied *beyond reasonable doubt*, and those are the vital words, either that Lennon knew of the murder plan, remembering that the Crown were not entitled to call in aid as against him the statements of the other accused or that, knowing of the plan to steal the weapons, he foresaw at least grievous bodily harm to the police as a probability.

I felt even less inclined than if I had been sitting with a jury, as a separate tribunal of fact, to wait and see what, if any, evidence Lennon would give as to his knowledge and state of mind and how he might give it.

Coming to Counts 3 and 4 Mr. Nicholson submitted that Lennon was never in a situation in which he could be proved to have known about the weapons or be said to be in possession of the firearms, if he did know about them, nor, he submitted, was there a reasonable inference (in relation to intent to endanger life) that Lennon knew the guns were loaded or would be loaded at any material time. I consider that there is an overwhelming inference to be drawn that Lennon knew of the presence of the guns. How otherwise would the three men be expected to confront and disarm trained and armed police?

I am also satisfied beyond reasonable doubt that he knew his companions' weapons were loaded or would be by the time the police arrived. Certain things are not proveable by mathematics but are to be decided as a jury must decide them, by drawing conclusions from the evidence based on experience and what I trust is good sense. I am also satisfied that Lennon knew that the other men intended to endanger life. How else could they hope to take the police weapons?

I would not be prepared to hold that Lennon was himself in possession of the weapons but I accept Mr. Appleton's cogent submission based on *R. v. McCarthy*, [1964] 1 W.L.R. 196, that he was aiding and abetting the other three men in

(1) being in possession of the arms with intent to endanger life and (2) being in possession in suspicious circumstances. The case mentioned was concerned with possession in suspicious circumstances under section 4 of the Explosives Act, 1883, but I consider that it provides a sound analogy in relation to both Counts 3 and 4 and that a propriety of relying on it does not simply depend on the wording of the 1883 Act.

At the time of setting out on the journey and immediately before it Lennon was undoubtedly in close enough touch to be truly "present", one of the requirements for aiding and abetting, and by acting as scout car he was assisting the men who intended to endanger life and was, as I find, intending that they should accomplish that object.

In order to be quite satisfied that Lennon knew that the other men had guns I have not found it necessary to consider the various constructions of the words allegedly used by Lennon in his oral statements or to decide on the reason for needing a scout car. I am content to base myself on the fact that no one could fail to appreciate that other members of his organisation planning even a robbery of the weapons from policemen could not fail to go armed. In the event I conclude that the accused Lennon is guilty on Counts 3 and 4, since an aider and abettor is liable to be proceeded against and convicted as a principal.

(A true copy of the Judgment delivered by The Right Honourable The Lord Chief Justice on the 6th day of December, 1973.—Registrar.)

IN HER MAJESTY'S COURT OF CRIMINAL APPEAL IN NORTHERN IRELAND

THE QUEEN

v.

PATRICK JOSEPH THOMPSON

(Judgment of *Lowry L.C.J.*)

The grounds of appeal in this case were as follows:

1. That the verdict of the learned trial judge is unsafe and unsatisfactory.
2. That the learned trial judge by his questions and interventions during the course of the trial indicated bias against the accused, and that this bias is apparent from a consideration of the learned trial judge's questions and interventions throughout the trial.
3. That from an early stage in the trial the learned trial judge had formed a view and attitude about the case, which was adverse to the accused, and that he thereby precluded himself as the tribunal of fact from considering, evaluating and assessing all the evidence in an impartial and completely unbiased manner.
4. That the learned trial judge failed to give adequate and fair consideration and weight to the evidence, including the medical evidence, called on behalf of the accused.
5. That the learned trial judge should have excluded the statements of admission, verbal and written, alleged to have been made by the accused, and relied on by the Crown, on the grounds that the accused was subjected to torture or to inhuman or degrading treatment by members of the Royal Ulster Constabulary in order to induce him to make the said admissions.
6. That the learned trial judge was wrong in holding that the Crown had discharged the onus of proving beyond a reasonable doubt that the admissions, verbal and written, relied on by the Crown were not obtained by reason of, or as a result of, torture or inhuman or degrading treatment, and that the finding was contrary to the evidence.
7. That the learned trial judge should have excluded the admissions relied on, verbal and written, in exercise of his discretion, and was wrong in failing to do so.
8. That, as the tribunal of fact, the learned trial judge failed to examine critically and objectively, various inconsistencies and contradictions in the Crown evidence particularly in relation to the evidence relevant to the manner and circumstances in which the accused's written statement was taken, and the attitude of members of the Royal Ulster Constabulary at Bessbrook Station, following complaint of ill-treatment by the accused.

They are impressively drafted and, within the limits imposed on counsel by the material available to him, were impressively, thoroughly and very well presented.

As Mr. McSparran for the appellant summarised the matter to us in opening, the points which arose on his case and which formed the common thread in the pattern of his submission were—

1. the effect and weight of the circumstantial evidence, with particular reference to the accused's movements at and near the relevant time and place;
2. the admissibility and weight of the oral and written statements of the accused to the police; and
3. the learned trial judge's general conduct of the trial, in so far as it is alleged to indicate bias on his part.

So far as the first point is concerned, there was in our opinion a strong *prima facie* case against the accused. This gained in weight from his failure to give an explanation of his movements, including his presence in the field, which was reasonably consistent with his innocence.

Secondly, the statements of the accused to the police were, if admissible and, in respect of his direct participation, true, conclusive proof of guilt.

Moreover, the admissions of the accused and the other evidence against him were mutually consistent and, taken together, made up an overwhelming case. It is salutary that this fact should be recognised and properly evaluated, since one, but by no means the only, criterion of the admissibility of a confession is its probable veracity in important details and its consistency with other credible evidence.

The most vigorously contested issue was, naturally, the admissibility of the statements, both oral and written, of the accused. He made the case that he had received ill-treatment of such a kind as to amount to torture or inhuman or degrading treatment, and therefore the Crown had to disprove such ill-treatment beyond a reasonable doubt under section 6(2) of the 1973 Act.

Mr. McSparran's attack on the Crown case was two-pronged. He invited the trial judge to reject the evidence of the police and to accept or at least give credence to that of the accused in relation to the interviews, including that relating to the ill-treatment alleged by the accused and denied by the police and to what the accused is alleged to have said and how he came to say it. He also invited the judge, on a comparison of all the medical evidence, to say that this process either undermined the policemen's evidence or at the very least created a reasonable doubt whether it could be relied on. I mention both lines of attack first before embarking on analysis or comment because, to reach a conclusion on the admissibility question, the judge had to weigh both aspects of the relevant material and would not have been right to keep them separate and distinct, since the conclusion on one aspect was relevant to that reached on the other and both were directed to resolving the same issue.

Obviously, in the absence of a misdirection or a failure to have regard to relevant evidence, the tribunal of fact which saw and heard the witnesses, enjoyed an enormous advantage to which lip service is invariably paid but which it is always essential to recognize at its true worth. There was no misdirection or failure to have regard to relevant evidence, as is made clear in the learned trial judge's long and meticulous judgment, one of the most careful and painstaking which I have had the privilege of reading. One can only admire the amazing accuracy of the judge's note, as reflected in his judgment, when later compared with the transcript of the shorthand note, and this too is important, because it means that decisions were reached on the basis of what was undoubtedly said by the witnesses.

In these circumstances it was well-nigh impossible to challenge the right of the learned trial judge to reach the conclusions of fact at which he did arrive, but (apart from the question of bias to which I shall presently come) there were two main contentions. The first was that the police evidence was inconsistent and on its face unworthy of belief. We reject these contentions: the inconsistencies which can be found are merely those which appear in any complicated case which has not been manufactured. The denial by one police witness that any questions were asked of the accused during his written statement is something we could scarcely accept but this is a frequently observed phenomenon, to be regretted but rarely possessing any significance beyond an understandable though insupportable wish to have been seen to have complied to the letter with one of the Judges' Rules. It was contended that not to take notes during an interview of, at least, the most important admissions was such a departure from

good police practice as to show that the evidence of those admissions was untrue and this is a point on which it is easy to cross-examine effectively. It strikes one, however, that if a case is concocted to that extent, nothing would be easier than to stop up an obvious gap by concocting a contemporaneous note as well. It is equally well known that interviews may profitably proceed as ordinary conversations without the delay and formal atmosphere which are induced by the need to pause for the making of a record. Each method of interview has its benefits and disadvantages, but the absence of a simultaneous note is not a badge of fraud.

A further objection was taken, both in cross examination and later, to the fact that a note alleged to have been made shortly afterwards was in a form suitable for a statement of evidence rather than a mere note of what had happened. This has been met before by all the members of the court and, if it were thought to be a sinister indication, could very easily have been avoided. The close harmony between the police notes and the written statement, both of which, on counsel's invitation, we have studied most carefully, does not give rise to any misgiving. If someone is giving, at a short interval of time an account of something which really happened, he is likely to use the same language and to describe events in the same order.

Turning to the medical evidence, Mr. McSparran concentrated mainly on two aspects. The first was the reasonable possibility of blows being delivered to the accused's abdomen and testicles without leaving marks. On this point we have to remember the accusation of the accused which was that he was repeatedly and painfully punched and kicked in these areas. Such treatment, it was said on behalf of the prosecution, would be unlikely to leave no marks. Secondly, counsel relied on a fit or turn which the accused had at 1:00 a.m. after having given his statement late the previous night and elicited from the police that he appeared relaxed until just before the turn occurred. Counsel also pointed out that no record of the turn was written down. Further, he got from Mr. Dane the evidence that a sudden turn on the part of a relaxed man who had exhibited no symptoms leading up to the turn was very untypical of an hysterical fit, which was the diagnosis of Dr. McVerry. The point intended to be made was, of course, that the turn was more likely or equally likely to have been the result of ill-treatment. This hypothesis would support the accused against the police in regard to his treatment.

But this ingenious structure must be inspected in the context of what happened. The accused's own evidence was that he had been struck one blow with the fist in the seven and a half hours before his turn occurred. Owing to the fact that the Crown medical witnesses were called before the accused gave his evidence, this point received no attention at their hands. There is, to say the least, room for the view that to suffer from a turn due to ill-treatment all of which was inflicted seven and a half hours previously except for one punch is even more "untypical" than to suffer from a turn due to psychological causes all of which would presumably remain and continue to operate on the accused and to erode his spirit. Nor does one need to be over-worldly to appreciate that the police witnesses were likely to say that the accused appeared to be relaxed, when it was probable in a "confession" case that they would ultimately be alleged to have ill-treated him. Indeed it is probable that he may have appeared relaxed and even been talkative and euphoric after confessing. It would not follow that he was relaxed in the true sense of not experiencing any tension in the circumstances. There is indeed another point: if the beating received by the accused was so severe as was alleged by him in evidence, it could be regarded as surprising (1) that reaction was delayed for seven hours and (2) that there were no marks even admitting that some blows in the relevant areas might conceivably be inflicted without leaving marks. Lastly, although the onset of the fit was not recorded, the police immediately sent for Dr. McVerry, who arrived at 1:20 a.m.

We have also considered the argument that in the exercise of his discretion the learned trial judge ought to have excluded the accused's statement but there is nothing in this point. My observations so far bring me to a point of general application. It is clear from the course of the trial that the Crown medical witnesses' evidence and cross-examination would have been ever so much more significant and relevant if the accused had already given his evidence. The same was true, though in lesser degree, of the police witnesses on the admissibility issue. It is therefore useful for this Court to give a reminder of the true posi-

tion relating to a *voir dire* issue governed, not by the common law where the voluntary nature of a statement has *prima facie* to be established, but by section 6(2) of the 1973 Act whereby, once *prima facie* evidence of the making of an oral or written statement is adduced by the Crown, the accused must raise a *prima facie* case of torture or inhuman or degrading treatment before admissibility becomes a triable issue. Therefore the right course is for the defence to make its case under section 6(2) and only then, if a triable issue is raised—and the defence should not be allowed to divide its proof on this issue—, does it become the duty of the Crown to rebut the defence case and to prove beyond reasonable doubt that it is wrong. Indeed, in *voir dire* issues even under the common law, it may frequently be the best course to reserve the Crown medical evidence (and sometimes other evidence) for the purpose of rebuttal.

On the case so far the learned trial judge could not be called in question for the conclusions which he reached, namely that the statements were admissible and reliable. It is in these circumstances that the appellant relies on the judge's alleged bias as disabling him from forming a true view of the evidence and therefore invalidating the result of the trial. This is the most important aspect of the proceedings before us, since it is a grave allegation of something which if proved gravely impairs the workings of the machinery of justice in any trial in which it occurs. The word bias, a metaphor from the game of bowls in which the wood is weighted on one side, imports that the tribunal is handicapped by an inclination to turn to one side, thereby deviating from the straight course which it ought to follow, and is disabled by prejudice from doing justice.

I commence my review of this point by stating our conclusion plainly for all to see, that the Court considers this imputation quite unwarranted and unjustified by the course of the trial as revealed in the verbatim transcript. I have already shown that on the state of the evidence counsel could not hope to succeed unless by impeaching the very foundations of the learned judge's approach. This explains the importance as well as the gravity of the point and I need hardly say—and I am confirmed by the decided cases—that, where bias is shown, even the most powerful Crown case must usually give way in the general interests of justice.

Counsel went through the lengthy transcript with a fine tooth comb, though let me say also with expedition, great competence and economy of language, extracting for our inspection the interventions and interruptions of the learned trial judge. These were by no means numerous or startling and many, we feel sure, were made in order to clarify the evidence and the judge's note which, as usual with this particular judge, turned out to be one of superlative accuracy. Mr. McSparran, while condemning outright only a very few passages asked us, fairly enough, to consider the overall effect. By the same token we must remember to consider the overall effect on our minds not only of all the interventions but of those interventions judged beside the totality of the evidence and the entire course of this 19-day trial. Only if both exercises are attempted is a true picture received.

An allegation of bias, which happily is rarely made and even more rarely proved, is usually founded on showing that the trial judge interfered in such a way as to hamper the defense in presenting its case to the court or jury or as to prejudice the jury in its task or as to indicate that he had formed a view so adverse to one party that he has disabled himself from coming to a conclusion by proper judicial methods. It is on the third of these aspects that counsel has concentrated his attention here. In a non-jury trial it is inevitable that the judge, as tribunal of fact, will seek to inform himself on the points which look like being relevant and he will be more inclined to tidy up the evidence as he goes along in situations where, with a jury, he might be more passive. But in both jury and non-jury trial there is a fine distinction between unduly protecting a witness and keeping the evidence on the rails when that witness is being cross-examined by an able advocate, however scrupulous. And every advocate—the members of this court were no doubt no exception in their time—is inclined to think that all the judge's interventions fall into the former class rather than the latter. There were, I feel, three occasions in this trial where counsel voiced a protest which indicated that he had been rather too quick to assume that his side was being given less than justice and an equally small number of instances where the judge could truly be thought to have commented adversely. All this must be seen against the background of a difficult 19-day hearing of a very serious charge, which imposed

considerable stress on the judge and counsel, and it must be recorded that, if the transcript is anything to go by, the trial was noteworthy for the excellent spirit in which it was carried on from day to day and for the complete absence of outbursts, recriminations and wrangles on the part of either judge or counsel. Whether one looks at the authorities (such as *R. v. Clewer* 37 C.A.R. 37 *R. v. Barnes J. J.* C.A.R. 100 and *R. v. Hircock* [1970] 1QB 67, to name but three examples) or draws on one's own experience, the impression is the same: this was, within the limits imposed by the subject matter, a most harmonious and well-conducted proceeding on all sides, in which only with the aid of a powerful microscope can we find any trace of judicial bias whatever.

Nor are signs wanting to point positively to an absence of bias. The defence was, quite properly and laudably, afforded considerable latitude to make its case and a number of closely shaded rulings were given in its favour, the trial judge took a close interest in every defence submission and line of cross-examination and, even in this very long trial, showed absolutely no sign of impatience or incredulity while the defence case was developed in direct evidence and cross-examination and in argument, the judgment is of great length, is most careful and detailed and considers the Crown and defence cases with equal care and finally (which would be most unlikely in a biased tribunal) refuses to accept the Crown case independently of the accused's admissions as proving guilt beyond reasonable doubt. This is notable, when one considers that the admissibility of the statements was recognized to be a needle issue.

On this question of bias counsel relied largely on the corporal Sweeting incident, if I may so call it. The learned trial judge allowed this witness to be recalled, properly as we hold, in view of an unforeseen development in the defence case. It turned out that the Corporal had made an earlier statement than his written deposition, which was ultimately put into the possession of the defense. Mr. McSparran cross-examined, and has addressed us, on the basis that Corporal Sweeting's statements and his evidence and further evidence were mutually inconsistent and submitted that, by allowing the recall of Corporal Sweeting and giving him a testimonial as a witness of truth, the trial judge had shown himself to be prejudiced and handicapped by the possession of a closed mind since, whatever view one took of the right to recall the witness, to believe him was irrational.

We disagree and we feel that counsel is transferring to the judge the opprobrium, whether deserved or not, which he initially heaped on the Crown for withholding the Corporal's first statement and on the witness for his alleged inconsistencies. I say 'alleged' because the Court's view is that the Corporal's statements and evidence are not inconsistent or at least not inconsistent in a way which indicates dishonesty. Therefore we also conclude that the learned trial judge was justly entitled to believe his evidence.

While on the subject I might say a word on the duty of the judge when giving judgment in a trial under the 1973 Act. He had no jury to charge and therefore will not err if he does not state every relevant legal proposition and review every fact and argument on either side. His duty is not as in a jury trial to instruct laymen as to every relevant aspect of the law or to give (perhaps at the end of a long trial) a full and balanced picture of the facts for decision by others. His task is to reach conclusions and give reasons to support his view and, preferably, to notice any difficult or unusual points of law in order that, if there is an appeal, it may be seen how his view of the law informed his approach to the facts.

Having concluded that there was no bias on the part of the judge I come finally to the submission that the result was unsafe and unsatisfactory. There is, in the Court's opinion, no room for this view. The case against the accused was a strong one and his explanation of his movements lacks credibility. The facts which the judge found proved are fully consistent with the confession and there is no need to entertain any qualms as to the correctness of the conclusion reached.

We are indebted to counsel on both sides for their thorough and expeditious treatment of this lengthy case. In the event we are satisfied that the grounds of appeal are unsustainable and the appeal will accordingly be dismissed.

(A True copy of the Judgment delivered by the Right Honourable The Lord Chief Justice on the 31st day of March, 1977.—Authorised Officer.)

BELFAST CITY COMMISSION

THE QUEEN

v.

VINCENT PATRICK HETHERINGTON, JAMES OLIVER DOUGAN, MYLES VINCENT MCGROGAN,
PETER ANTHONY YOUNG, DANIEL PATRICK FARRELLY, AND PATRICK GERARD MCCUNE

(Judgment of Lowry, L.C.J.)

At about 7:40 p.m. on Friday, 10th May, 1974, Constables John Malcolm Ross and Brian Edmund Bell, Royal Ulster Constabulary, stationed at Dunmurry, County Antrim, were on duty in uniform at Finaghy cross-roads which lies just south of Belfast. A Morris Marina car, of which the registered number was H01 914, arrived from the direction of Andersontown, where it had been stolen. A number of men got out, attacked the constables with pistols and shot them at point blank range. This happened while the victims were on the footpath on the north west corner of the cross-roads outside Watson's Chemist shop. One of the constables was dead on reaching hospital, while the other died soon after admission. After the shooting, the assailants drove away in the same car towards Andersontown and the driver in his haste crashed the car in Finaghy Road North.

Inquiries were started immediately. Six detectives, including a detective sergeant, were temporarily sent from Castlereagh Police Station to Dunmurry to assist the detective sergeant and the eight other detectives based there, in solving the crime. The inquiry team interviewed a number of witnesses and, between 16th and 18th May, brought to Dunmurry Police Station certain suspects including the present accused and on the strength of admissions made by the latter, preferred charges against them. A vital issue at the trial, which has occupied 34 days so far, has been whether written statements signed by the accused and police witnesses' accounts of question and answer interviews with them should be admitted as part of the Crown case or rejected on the ground that the accused had been subjected to force, threats of force and other oppressive treatment with the object of inducing them to confess their guilt.

At the close of the prosecution case I heard submissions on behalf of each accused based on the propositions that there was not evidence fit to be considered by the tribunal of fact or that it would be dangerous to proceed having regard to the state of the evidence and I accepted to the applications by Young, Farrelly and McCune.

At that stage, with the possible exception of Young, the accused were not in a position to rely on the terms of section 6 of the Northern Ireland (Emergency Provisions) Act 1973 which provides:

"(1) In any criminal proceedings for a scheduled offence a statement made by the accused may be given in evidence by the prosecution in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of subsection (2) below.

(2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, prima facie evidence is adduced that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies them that the statement was not so obtained, exclude the statement or, if it has been received in evidence, shall either continue the trial disregarding the statement or direct that the trial shall be restarted before a differently constituted court (before whom the statement in question shall be inadmissible)."

The defence have now carried the trial further and by arrangement have adduced, not all the evidence which might be called, but that which bears on the Court's determination under section 6(2) and which incidentally could provide a further basis for one of the defence's original submissions, that the Court in its discretion ought to exclude admissions allegedly made by the accused on the ground that to admit them would not be in the interests of justice.

The only evidence against the accused consists of their statements or alleged statements, both oral and written, and, in the case of Dougan, two marked maps purporting to bear his signature. All this evidence is covered by section 6 and the extent to which the Crown case stands or falls under this section depends here entirely on what, if any, statement evidence is to be admitted and regarded.

Prima facie evidence has been given that each of the accused was subjected to torture or inhuman treatment or degrading treatment in order to induce him to make the statements relied on by the Crown. I stress the use of the word "or" in the phrase "torture or inhuman or degrading treatment". This means that evidence of the use of any one of these forms of treatment is enough to lead to the next step, which is that the burden of proof is cast upon the prosecution to satisfy the Court that the statement was not "so obtained", that is, obtained by any one of the three kinds of treatment already mentioned.

In my view that burden has to be discharged not on a mere balance of probabilities but beyond reasonable doubt. The reasons for my opinion can be stated thus:

(1) The context of section 6 is that of a criminal trial and the prosecution's standard of proof of issues in such a trial (even when they must first be raised by the defence) is proof beyond reasonable doubt;

(2) The use of the word "satisfied" in section 2(4) must imply proof beyond reasonable doubt;

(3) At common law where, with a view to the admission or rejection of statement evidence, the issue for the trial judge is one of voluntariness, the proof must be beyond reasonable doubt;

(4) A statute, particularly where it abridges the rights of an accused, must in case of ambiguity be construed so as to alter the law as little as possible consistently with the language used.

Therefore, once prima facie evidence is adduced, as I find it has been here, that the accused were subjected to any of the three kinds of treatment specified in order to induce them to make the relevant statements, it is for the prosecution to eliminate from the mind of the Court in each case the reasonable possibility that the statements were so obtained, either by proving that an accused was not subjected to any such treatment or, if he was or may have been, that the statement was not obtained by means of such treatment.

In circumstances where the accused have an obvious motive for giving evidence to destroy the effect of their admissions and the police have also a strong motive for denying everything which indicates improper conduct on their part, one looks for independent or circumstantial evidence and seeks assistance from such inferences as may reliably be drawn from known facts.

I therefore turn to the evidence of Dr. Howe and Dr. O'Rawe adduced as part of the defence case since the first submission. Dr. Howe examined Hetherington, McCune and McGrogan on the 18th May at Crumlin Road Prison and Young on the 19th May and Dr. O'Rawe examined Dougan there on the 18th May. Their findings on examination were carefully recorded and their inferences were given in what seemed to me an equally careful and conservative way. It appeared in evidence, which would accord with one's expectations, that some or all of the accused were examined by the prison doctor, and all could have been so examined, soon after admission to the prison and therefore the Crown had ready access to the means of contradicting Dr. Howe and Dr. O'Rawe as to their findings and to some extent as to the inferences they drew if the Crown had thought fit to do so. This fact obviously provided a useful check on the reliability of these two already impressive witnesses. It may also be noted that they did not accept without question all that was said to them by the accused, and also the accused did not universally complain, for example, of tenderness in every part during examination.

The two doctors, with whom Dr. Hall agreed on this point, testified that it was possible to inflict pain in such a way that there would or might not be visible evidence, and some of the complaints of the accused were of conduct which could have caused pain without physical signs. In no case were the physical signs or the inferences of the medical witnesses such as to indicate in their opinion very severe or systematic physical ill-treatment, and it is open to question how far their evidence, taken by itself, would support a charge of torture or inhuman treatment. These are ordinary English words and cover a wide field of conduct which defies precise definition. It appears to me, on an ordinary construction of language and consistently with the principle that every word in the statute should be taken to add something to the meaning, that degrading treatment, while it must overlap considerably with torture and inhuman treatment, must also cover conduct which does not necessarily fall within the first and second types of behaviour mentioned in the section, and I find without doubt that, if the treatment necessary to cause what Dr. Howe and Dr. O'Rawe found

was meted out to persons being interrogated in custody, it was degrading treatment. I mention the circumstances because more severe injuries could be inflicted, even unintentionally inflicted, in the course of a sport such as boxing without the treatment being considered degrading, except on entirely different principles which are irrelevant in this context.

It is necessary now to consider the examinations made by Dr. Hall who is in general practice and examines persons at Dunmurry Police Station from time to time at the request of the police. He, too, impressed me in respect of his integrity, and the findings he announced on his examination of Young testified to his independence. This accused was the only one who complained to Dr. Hall concerning ill-treatment at the police station, and, although I am not now directly concerned with this accused any more than with McCune, the physical findings in relation to him are most relevant to the general picture.

In relation to the accused other than Young, Dr. Hall's findings were negative except for an irrelevant scald mark on Hetherington's shoulder and a swelling over McGrogan's right eye. All these men said they had no complaints and their examination took a very short time on each occasion. Some, but not all, of the examinations took place at a stage when, even on the defence case, not much ill-treatment may have occurred, but even allowing for this, there are some discrepancies between Dr. Hall's evidence and that of his medical colleagues. In these circumstances one has to remember that, as between honest witnesses, he who affirmatively notices something is in a stronger position than he who does not, especially if complaints have been voiced to the former and not to the latter. McGrogan's eye supplies an example. Dr. Howe noticed an abrasion, the skin having been cut, as well as the swelling. Unless the cut was sustained after Dr. Hall saw McGrogan, he must have missed it if Dr. Howe is correct. Then Dr. Howe did not notice, or perhaps did not note, Hetherington's scald which Dr. Hall saw and which had been sustained before he entered the police station. I consider that it is extremely unlikely that any significant part of the physical damage observed by Drs. Howe and O'Rawe could have been sustained after Dr. Hall's examination and I take into account with special reference to the bruises that these signs of injury may take some time to become obvious. Here again, the admitted condition of Young cannot be left out of account when weighing the probabilities and possibilities.

The accused themselves, including McCune, also gave evidence which was consistent with their visible injuries having been sustained in the course of or with a view to interrogation. They also gave evidence of physical ill-treatment which might not have resulted in physical signs. Despite the reserve with which a prudent court must treat such evidence, it gains in strength in this case from the physical signs which are corroboration of some of the ill-treatment alleged by the accused.

Further allegations of psychological ill-treatment in the shape of threats, production of revolvers, production of photographs of a person who had been shot in mysterious circumstances, tying of hands and hooding and the introduction of an electric battery have been made and denied. That is not to say that the Court has sufficient discernment to separate fact and fiction in an area where false allegations of this kind, as well as false allegations of physical ill-treatment, can so easily be made and with such difficulty be refuted, but the physical signs already mentioned and the condition of Young continue to be important, having regard to the onus and standard of proof. It is not for the defence to prove but for the prosecution to disprove beyond reasonable doubt in relation to each accused that he was not subject even to any degrading treatment in order to induce him to make a statement on which the Crown rely, or at least prove to the same standard that the statement was not so obtained.

It will be noted that, just as where the issue is whether the statement is voluntary under the ordinary criminal law, the probable or even clear truthfulness of the statement will not cause it to be received in evidence unless the prosecution prove beyond reasonable doubt that it was voluntary, so here the decision under section 6(2) must be based solely on how the statement is proved to have been obtained and not on whether it was true. To say that the truth or probable truth of the statement is irrelevant is not correct because that point may be one which goes to the likelihood of the statements having been made voluntarily or, in a case like this, free from the influences listed in section 6(2).

Both sides have directed much energy and thought to the examination of the statements in order to deduce inferences as to the intrinsic probability that they are genuine. I forbear to analyse the contentions, since even if I were convinced of the truth of the statements, this would not in my view dispose of the Crown's difficulty with regard to their admissibility. The accused, even if one makes generous allowance for their predicament, did little in their evidence to promote the view that the contents of their written statements were wrong in so far as they consisted of admissions. I do not propose to take the matter further in that direction.

Another aspect of the case to which counsel devoted great industry and, in the favourable sense of the word, considerable ingenuity was concerned with the question and answer notes of the interviews to which various detectives testified. Apart altogether from the submissions addressed to my discretion at both the first and the second stage, this analysis was relevant to test the credibility of the evidence of the same witnesses who were denying the ill-treatment and to see whether the evidence based on the question and answer notes was a substitute for evidence of the real and possibly sinister events of the 16th to 18th of May, which if disclosed would or might reveal the ill-treatment to which the accused were, as alleged, subjected.

To do justice to the arguments of counsel on this part of the case and to arrive at firm, or even probable, conclusions on each contested issue is a task which would take much time and labour and which, having regard to the onus and standard of proof, I need not attempt. I may, however, summarise the salient points which increase the difficulty of the prosecution in satisfying the Court that all was well:

1. There were a number of documents which were suspect by reason of their composition or appearance, for example McCune 1 and 2 (when viewed with exhibits 46 and 48) and exhibit 29, a question and answer not relating to Dougan;

2. Other documents were difficult to understand in context, such as the question and answer interview with Hetherington at 8.10 p.m. on 16th May after he had made comprehensive admissions in his written statements, which were exhibits 9 and 10;

3. It was heard in many instances, no matter how many allowances one made, to relate the number and length of the questions and answers to the time devoted to the interviews at which they were asked and given;

4. There were many examples of wholly innocuous question and answer sessions leading nowhere at a time when more useful material was available to the interviewers;

5. There was almost universal ignorance on the part of those about to take up the running with a suspect concerning what had gone before;

6. The fifth point was noticeable even in relation to those who were sent in to take important written statements;

7. The interviewers and statement takers found themselves detailed for the work almost by chance and did not, on the whole, appear to be briefed or to brief themselves for the task;

8. Many of the interviews, including those directly preceding the taking of statements, seem to have ended on an inconclusive note, or arbitrarily when a breakthrough had been achieved, and in the latter instances, as well as the former, not only one but both of the interviewers (if more than one) were changed.

I recognize that many of the criticisms, as well as many of the excusals, of discrepancies in the statements and notes would be of no importance in the ordinary way and of very limited importance even in the atmosphere of uncertainty which finally surrounded the present investigations. But, even when I fully discount the less striking and probative examples, I find that the prosecution are left with a very substantial number of points which call in vain for a rational explanation and the cumulative effect of which is to increase beyond hope of retrieval the difficulty of discharging the onus under section 6(2).

On the question of exercising my discretion to exclude otherwise admissible evidence I received great help from both sides for which I am grateful. I regret that considerations of time and dictates of policy do not favour a careful analysis by me of all the arguments on this branch of the case, including those based on a comparison of the American doctrine of due process with our equally firm, though

not statutorily based, principles of fair trial. I feel obliged to resist that temptation in view of the conclusion I have reached on section 6(2).

Much of the evidence of physical ill-treatment does not seem to be supported, even when one allows for the ability to injure without marking the body, by the medical testimony and there is nothing to indicate severe or lasting injury, but the prosecution cannot discharge an onus through a possible failure of the defence to prove as much as it has alleged.

Those who bore the sole responsibility for this vitally important investigation into two callous murders stood very close, in point of rank and service alike, to men who were the daily colleagues and comrades of most of them. As such I consider that the investigators were placed in a most unenviable position. It is almost certain that they believed, and probable that they believed on substantial grounds, that they were investigating the right men and I have found absolutely nothing to suggest that the investigating team were framing men in whose guilt they did not believe. But in certain respects our criminal law demands that not only the evidence but the means of obtaining it shall be above suspicion.

It will continue to be a fact that men of apparently ruthless intent and character will confess to crimes for reasons and in circumstances which, like the human mentality, are difficult to understand. Therefore the mere fact of unexplained confusion is not a potent factor against the Crown in an argument such as the present.

But on the facts of this case I am not satisfied that the Crown has proved beyond reasonable doubt, or indeed on the balance of probabilities, if that were the required standard, in relation to any of the three accused, that he was not subjected to degrading treatment in order to obtain the statements relied on by the Crown, whether written or oral, or that the statements were not so obtained. I therefore reject the statements and since there is no other evidence against the accused, that means that I must also enter findings of not guilty on all counts.

I have carefully considered Hetherington's written statement on 17th May where, admitting to membership of the I.R.A., he echoes alleged oral admissions made the previous day. Apply *R. v. Flynn and Leonard* (Blue Book Reports May 1972) to the new context, I consider that it would be unrealistic to find that such influence as may have existed on 16th May had been dissipated effectively by the time this statement was made.

(A True Copy of the Judgment delivered by The Right Honourable the Lord Chief Justice on Thursday, the 13th day of March, 1975.—Registrar.)

CHAPTER VII: MEETING WITH MINISTER OF STATE DON CONCANNON AND VARIOUS OF HIS DEPUTIES

On August 30, 1978, the delegation met with Minister of State Don Concannon and his deputies charged with political, security and prison functions.

The main points discussed with the British officials had to do with the political prospects of a settlement in Northern Ireland; the success of the British security measures in curbing violence and interceine killings, the Amnesty International report on the maltreatment of detained persons by agents of the Army and Royal Ulster Constabulary in interrogations, and the "on the blanket" prison protest at Long Kesh, the Maze Prison.

The British authorities told the delegation that the people of Ulster could only decide their fate by the use of the ballot box and that as long as certain segments of the population refused to exercise the right to vote or put up candidates the status quo would remain.

They were certain that the security measures adopted by their administration was succeeding because of the decrease in bombings in Ireland and England and attacks against their armed forces during the year.

With regard to the Long Kesh "on the blanket" protest, they characterized the punishment to which these prisoners were being subjected as self-inflicted. They made a point of showing the delegation a series of photographs of the Maze installations which depicted a modern well furnished establishment in impeccable condition.

The delegation took the opportunity to once again request permission to visit Long Kesh, a request previously made through the British Embassy in Washington prior to the departure of the study mission.

The request was categorically denied by Minister of State Concannon.

The delegation replied to the refusal by stating that if conditions were in fact as represented in the photographs shown, the British government should be proud to open it up to the visit of foreign officials. The delegation further expressed the opinion to Minister Concannon that serious consideration should be given to opening Long Kesh to the international media to counteract the adverse publicity now being advanced on the deplorable conditions which are reported to exist. This appeal to open up Long Kesh was repeated at the press conference subsequently held by the delegation.

As for the Amnesty International report, Minister Concannon refused to give it credence, questioning the methodology used and the factual basis of the information available to the investigators.

A. OFFICIAL BRITISH DESCRIPTION OF THE MAZE PRISON (LONG KESH)

Frequent mention is made in the report to the Maze Prison, more notoriously known as Long Kesh, a former detention camp near Belfast, which has been converted to a prison.

The present conditions in Long Kesh, particularly in H-Block cells, stem from the action taken by the British government to end "special category" status with effect from March 1, 1976 and treat all persons convicted of so-called political crimes as convicted criminals.

The following is background material on the situation which has arisen out of action taken by some prisoners housed in the H-Block units at Maze Prison as issued by the Secretary of State for Northern Ireland Affairs, Roy Mason :

THE ENDING OF SPECIAL CATEGORY STATUS

In June 1972, in the face of a hunger strike involving a number of prisoners, the Government of the day introduced "special category" status for prisoners involved with paramilitary organizations, both Republican and Loyalist, who had been convicted and sentenced to more than 9 months' imprisonment for offences related to the civil disturbances in Northern Ireland. Because of the large numbers involved and the lack of normal cell accommodation special category prisoners were housed in compounds. They were not to be required to work, could wear their own clothes and were allowed additional privileges including extra visits and food parcels.

By the end of 1973 there were 688 special category prisoners including 25 women. By December 31, 1974 the number had increased to 1,116, including 51 women. At the end of 1974 there were 545 male special category prisoners in compounds at Maze, 502 in compounds at Magilligan, and 18 in Belfast.

The use of compound accommodation gave rise to serious problems of control and administration. The whole question of special category status for certain convicted prisoners, and the use of compound accommodation, was closely examined by the Committee under the chairmanship of Lord Gardiner (the former Lord Chancellor) which reported in January 1975.* The following is an extract from the Committee's Report:

Prisons of the compound type, each compound holding up to 90 prisoners, are thoroughly unsatisfactory from every point of view; their major disadvantage is that there is virtually a total loss of disciplinary control by the prison authorities inside the compounds, and rehabilitation work is impossible.

The report recommended that the earliest opportunity should be taken to end special category and that the first priority should be to stop admitting new prisoners to it.

* Report of a Committee to consider in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland : Chind. 5847.

In November 1975 the Secretary of State, Mr. Rees, announced the Government's intention to start to phase out special category status. This phasing out process began with effect from March 1, 1976; no prisoner convicted of an offence committed on or after that date has been granted special category treatment, regardless of the nature of his offence.

THE "H"-BLOCKS AT MAZE PRISON

All prisoners who would formerly have been placed in "special category" have been placed in cells, most of them in Maze Prison, where eight new cell blocks of 100 cells each have been constructed. These are the blocks which are known as "H Blocks" because of their design in the shape of a letter H.

The blocks each cost over £1m, and associated with them are recreational facilities that include a £100,000 indoor sports hall and 2 all-weather sports pitches.

At the end of February 1976 there were more than 1,500 special category prisoners. Now the number has fallen to less than half that figure. At one time 30 compounds were needed to house the special category prisoners, now only 11—all at Maze—are needed for this purpose. This has enabled the former compounds to be converted to other constructive uses.

They are now used for prison industries, which are designed to provide worthwhile employment where a prisoner can have a satisfying job, which also results in the production of useful goods. Some of the vocational training programme is also given in a former compound and plans are in hand to double the scope of this type of instruction.

PRISONERS REFUSING TO WORK OR WEAR PRISON CLOTHING

In September 1976 the first prisoners were sentenced for offences committed after 1 March 1976, and it was then that some prisoners began to refuse to work or to wear prison clothing. These are the prisoners said to be "on the blanket".

Since September 1976, these prisoners have had the following:

A monthly visit, normal meals, toilet facilities and normal medical facilities. In their cell: A blanket at all times; a mattress and bedding—always at night and generally during the daytime; furniture—all the time; electric light (controlled by the prisoner)—on all day, and into the late evening. The availability of: one hour's exercise; the use of the dining room for meals; and library facilities. And, at a cost of about £350 a week per unit, oil-fired central heating at a minimum of 65 degrees F. Mass is also celebrated in the units.

THE START OF THE "DIRTY" ACTION

Since March 1978, 300 or so of the protesting prisoners in three of the eight H blocks at Maze have, in addition to refusing to work or wear prison clothing, also refused to use the toilets or empty their chamber pots.

They have smashed up all the furniture in their cells and torn up library books. They have poured urine and excreta into the corridors, and smeared food and excreta on the walls of their cells, the window frames and the outside walls.

The cells which the prisoners have fouled in this way have been thoroughly cleaned during the past few weeks, and a continuous cleaning programme, using modern machinery, is in hand.

The facilities which were available since September 1976 continue to be available, except that, because of the prisoners' own actions, their furniture—all of which they had broken—has been removed. The prisoners are currently sleeping on their mattresses.

Again, because of destruction by the prisoners, library books are not currently available.

However, as since September 1976, most of the prisoners are taking their visits and attending religious services, wearing prison clothing in both cases. The facilities of the welfare officer are also available.

THE MEDICAL ASPECTS

The medical and public health aspects are being closely watched; the Northern Ireland Office receives daily reports from the doctors at the prison. Every prisoner who reports sick is seen by a doctor without delay. So far no prisoner has been found to be suffering from any form of illness, physical or mental, major or minor, attributable to the protest. The prisoners are being fed in their cells, and there is no evidence whatever that any prisoner is suffering from under-nutrition.

TREATMENT OF THE PROTESTERS BY PRISON STAFF

The Governor and the staff have acted with great restraint in the face of this most provocative form of protest action. There is no doubt that one of the objectives of the current protest is to harass and provoke staff, but the prison officers—despite the murder in the course of the terrorist campaign of six of their colleagues and many other attacks—have continued to carry out their duties responsibly, and indeed with compassion and understanding, in spite of the unpleasant conditions which the prisoners are deliberately creating.

There is no truth in allegations that prison staff have beaten the protesting prisoners or maltreated them in any way. The prison Governor would not condone rough treatment of prisoners, of whatever nature, by staff. Prison officers know that any complaints by prisoners of ill-treatment are thoroughly and promptly investigated, and if substantiated will lead to disciplinary action.

THE GOVERNMENT'S ATTITUDE TO THE PROTEST

The Government is seeking, in the face of a prolonged terrorist campaign in which more than 1,800 people have been killed and another 20,000 injured, to maintain the rule of law. It is an essential element of the Government's approach that those found guilty after due process of law shall, if they are sent to prison by the courts, serve out their sentences in prison conditions which are as fair and humane as possible. Any fair and humane prison system must rest upon com-

pliance with a set of Rules which apply to all convicted prisoners, not just to some of them.

The declared objective of the protesting prisoners and those who support them is to secure the restoration of a form of special treatment for certain prisoners convicted in the courts of criminal offences. The prisoners concerned, however, are in no sense political prisoners detained for what they believe; of those taking part in the "dirty" protest, more than 80 have been convicted of murder or attempted murder, and more than 80 of explosives offences. The Government has made it plain on repeated occasions that it will not be deflected from its policy of phasing out special treatment for prisoners, no matter what protests are made inside or outside the prisons.

It is not the Government's wish that the protesting prisoners should continue to endure their present conditions, conditions which they themselves have created. But the choice rests with them, and perhaps even more with those who influence them and their families from outside prison.

The publicity given to the activities of the protesting prisoners who constitute only 20% or so of the non-special category convicted prisoners, has taken attention away from the notable progress which has been made in Northern Ireland during the last 2-3 years in establishing a modern prison system with first-class facilities for work, vocational training, education and recreation.

By observing the rules through working and wearing prison clothes prisoners can have weekly visits, and can wear their own clothes (of an approved type) during recreation periods or when seeing their visitors—privileges which are unequalled in the rest of the United Kingdom.

B. ARCHBISHOP O'FIAICH STATEMENT ON LONG KESH

The Roman Catholic All Ireland Primate, Archbishop O'Fiaich, issued the following statement on conditions in Long Kesh after his visit to the H-Block on Sunday, July 30, 1978:

There are nearly 3,000 prisoners in Northern Ireland today. This must be a cause of grave anxiety to any spiritual leader. Nearly 200 from the Archdiocese of Armagh are among the total of almost 1,800 prisoners in the Maze Prison at Long Kesh. This is the equivalent of all the young men of similar age groups in a typical parish of this diocese.

Last Sunday I met as many as possible of these Armagh prisoners as the bishop appointed to minister to themselves and their families, conscious of Christ's exhortation about visiting those in prison. I am grateful for the facilities afforded me by the authorities.

SECOND VISIT

On this, my second visit as archbishop to Long Kesh, I was also aware of the grave concern of the Holy See at the situation which has arisen in the prison, and I wanted to be able to provide the Holy See with a factual account of the present position of all prisoners there, something which I shall do without delay.

"Having spent the whole of Sunday in the prison I was shocked by the inhuman conditions prevailing in H Blocks 3, 4 and 5, where over 300 prisoners were incarcerated. One would hardly allow an animal to remain in such conditions, let alone a human being. The nearest to it I have seen was the spectacle of hundreds of homeless people living in sewerpipes in the slums of Calcutta. The stench and filth in some of the cells, with the remains of rotten food and human excreta scattered around the walls, was almost unbearable. In two of them I was unable to speak for fear of vomiting.

The prisoners' cells are without beds, chairs or tables. They sleep on mattresses on the floor and in some cases I noticed that these were quite wet. They have no covering except a towel or blanket, no books, newspapers or reading material except the Bible (even religious magazines have been banned since my last visit); no pens or writing material, no TV or radio, no hobbies or handicrafts, no exercise or recreation. They are locked in their cells for almost the whole of every day and some of them have been in this condition for more than a year and a half.

BASIC NEEDS

The fact that a man refuses to wear prison uniform or to do prison work should not entail the loss of physical exercise, association with his fellow prisoners or contact with the outside world. These are basic human needs for physical and mental health, not privileges to be granted or withheld as rewards or punishments. To deprive anyone of them over a long period—irrespective of what led to the deprivation in the first place—is surely a grave injustice and cannot be justified in any circumstances. The human dignity of every prisoner must be respected regardless of his creed, colour or political viewpoint, and regardless of what crimes he has been charged with. I would make the same plea on behalf of Loyalist prisoners, but since I was not permitted to speak to any of them, despite a request to do so, I cannot say for certain what their present condition is.

Several prisoners complained to me of beatings, of verbal abuse, of additional punishments (in cold cells without even a mattress) for making complaints, and of degrading searches carried out on the most intimate parts of their naked bodies. Of course, I have no way of verifying these allegations, but they were numerous.

In the circumstances, I was surprised that the morale of the prisoners was high. From talking to them it is evident that they intend to continue their protest indefinitely and it seems they prefer to face death rather than submit to being classed as criminals. Anyone with the least knowledge of Irish history knows how deeply rooted this attitude is in our country's past. In isolation and perpetual boredom they maintain their sanity by studying Irish. It was an indication of the triumph of the human spirit over adverse material surroundings to notice Irish words, phrases and songs being shouted from cell to cell and then written on each cell wall with the remnants of toothpaste tubes.

The authorities refuse to admit that these prisoners are in a different category from the ordinary, yet everything about their trials and family background indicates that they are different. They were sentenced by special courts without juries. The vast majority were convicted on allegedly voluntary confessions obtained in circumstances which are now placed under grave suspicion by the recent report of Amnesty International. Many are very youthful and come from families which had never been in trouble with the law, though they lived in areas which suffered discrimination in housing and jobs. How can one explain the jump in prison population of Northern Ireland from 500 to 3,000 unless a new type of prisoner has emerged?

OBSTACLE TO PEACE

The problem of these prisoners is one of the great obstacles to peace in our community. As long as it continues it will be a potent cause of resentment in the prisoners themselves, breeding frustration among their relatives and friends and leading to bitterness between the prisoners and the prison staff. It is only sowing the seeds of future conflict.

Pending the full resolution of the deadlock, I feel it essential to urge that everything required by the normal man to maintain his physical and mental health and to live a life which is tolerably human should be restored to these prisoners without delay".

C. BRITISH GOVERNMENT REPLY TO ARCHBISHOP O'FIAICH

The following is the text of a statement by a spokesman for the Northern Ireland office in Belfast on Tuesday, August 1, 1978 con-

cerning the criticism of conditions at the Maze Prison by Archbishop O'Fiaich:

The government are most surprised that Archbishop O'Fiaich's lengthy statement about his visit to HM Maze Prison makes no reference to the essential fact that it is the prisoners themselves who have made conditions what they are.

These criminals are totally responsible for the situation in which they find themselves. It is they who have been smearing excreta on the walls and pouring urine through cell doors. It is they who by their actions are denying themselves the excellent modern facilities of the prison. It is they, and they alone, who are creating bad conditions out of very good conditions.

Each and every prisoner has been tried under the judicial system established in Northern Ireland by Parliament. Those found guilty after the due process of law, if they are sent to prison by the courts, serve their sentences for what they are—convicted criminals. They are not political prisoners: More than 80 have been convicted of murder or attempted murder, and more than 80 of explosive offences. They are members of organizations which are responsible for the deaths of hundreds of innocent people, the maiming of thousands more, and the torture by kneecapping of over 600 of their own people.

All prisoners including those who are protesting are entitled to monthly visits, normal meals, to use the toilets, medical facilities and daily exercise. Simply by observing the rules, which are an essential requirement if good prison administration is to be maintained, these protesting prisoners would immediately have all furniture, books and magazines returned to the cells (indeed they were only removed because they were being broken or fouled by the prisoners themselves) and be able to watch TV, listen to the radio and continue with their hobbies, handicrafts and recreation. These facilities are better than those available in most prisons in the rest of the United Kingdom.

The medical and public health aspects have been closely watched. All prisoners in blocks H3, 4 and 5 have been moved during the last two months so that their dirty cells could be thoroughly cleaned and renovated. Most prisoners have dirtied their cells again once they were returned to them. But in the interests of prisoners this cleaning programme will continue.

The Northern Ireland office receives daily reports from the doctors at the prison. Every protestor who reports sick is seen by a doctor without delay, and to date no prisoner has been found to be suffering from any form of illness, physical or mental, major or minor, attributable to the protest.

This protest action is the basis of a propaganda campaign which had been mounted by the IRA. It has been roundly condemned north and south of the border. Not surprisingly there have been allegations made to the Archbishop about ill-treatment of prisoners by prison staff. There is no truth in these allegations and prison officers know that any such complaints by prisoners are thoroughly and promptly investigated and, if substantiated, lead to disciplinary action. Indeed, only recently the work of the prison governor and his staff, in the difficult conditions in these three cell blocks, was commended by the prison's independent board of visitors, the members of which are drawn from both sides of the community. The board has access to all parts of the prison and the chairman pays frequent visits to the protestors' cell blocks.

It is not the government's wish that the protesting prisoners should continue to put up with their present conditions. But the prisoners and those who influence them should realise that the government will stand firm on its policy on special category status. No one who is convicted of a crime carried out after (1) (one) March 1976 (nineteen seventy six)—and that includes those involved in the "dirty" protest—will be given any form of special status. As soon as this decision is understood and accepted conditions in the cell blocks can return to normal.

D. PRESS EDITORIAL ON LONG KESH

The delegation feels that the Stephen Preston column which appeared in the Belfast Sunday News on April 23, 1978 and reprinted here reflects a judicious approach to the H-block dilemma.

[From The Sunday News, April 23, 1973. (Belfast Sunday Newspaper)]

(By Stephen Preston)

Minister Don Concannon last week visited the H-Blocks at the Maze Prison in which more than 300 prisoners are held naked save for the blanket which they clutch about them. Afterwards, Secretary Mason was able to report that the condition of the inmates "was not all that un-satisfactory".

That conditions in matters of health and hygiene are unsatisfactory at all reflects no credit upon the pampered colonial administration. Even the Secretary's qualified admission is a highly damaging one and, in any case, it is a gross understatement.

Since political status was withdrawn from convicted prisoners two years ago, those who feel that they should have it—and would have had it up until then—have been refusing to conform with prison discipline, or wear prison garb. This, of course, in matters Irish is nothing new. A century ago, Fenian prisoners were making similar protests in British prisons and the tradition has been carried on to this day.

COMPATIBLE

The Maze is something of a model prison. It was built at enormous expense and, compatible with the fact that it is after all a penal establishment, it is infinitely better than Hull, Walton, Dartmoor, Wandsworth, or Mountjoy in Dublin which are a disgrace to humanity.

The question is to be asked: with whom does the blame lie? It is arguable that the introduction of political status in the first place was a mistake. The general over-crowding of prisons and their understaffing at the time may have made it a necessity if the system were not to become completely unworkable. Considerations of humane interest may have had something to do with it, as also the realisation that those concerned had committed their misdeeds from political motivation.

But if the introduction was a mistake, the withdrawal was an absolute blunder. People convicted after the withdrawal date of offences committed before it were granted political status; others convicted before them, but for offences committed after the date, were denied it. This in itself, was a manifest injustice.

BEARABLE

The 300 or so of whom we are now speaking are existing in conditions which have been deteriorating steadily for two years. On the other hand, in the parts of the prison where the recognised "politicals" are held, there is a degree of order, and a self-imposed code of discipline which makes life at least bearable for both jailers and jailed.

The H-Blocks men could secure an amelioration of their lot tomorrow if they were to surrender. That they have not done so before now, notwithstanding that their conditions are worse than vile and that they are suffering from severe physical and mental illness, is a clear indication that they are prepared to put up with even worse in the cause of securing recognition of a principle.

Some of these men have committed particularly vicious and wicked crimes, and they have not scrupled to do things which make a total mockery of the Cause for which they claim to have been fighting—a War of Liberation. But they have been sentenced to terms of imprisonment up to and including Life. Even if they were held in conditions of perfection, they will not emerge to the light of freedom until the best years of their lives have passed, and then only as broken men returning to broken homes.

Society may be right in demanding that they pay the price of their misdeeds, but society has no right, no moral or legal justification to inflict upon them a system of punishment over and above their sentences which is nothing short of torture.

Reverend William Arlow, who has maintained continuing contact with the IRA, says he is convinced that there is not going to be any military solution. He is right. Persons in very high places whose business it is to combat the IRA's opprobrious activities admit that, on the basis of their most optimistic estimates, they can see these being carried on for at least two more years.

But that the H-Blocks men happen to be Republican activists should not allow people of conscience and compassion to harbour thoughts of vengeance, nor to tolerate the perpetuation of the shameful squalor of this department of Long Kesh.

E. MEETING WITH REPRESENTATIVES OF THE ASSOCIATION OF LEGAL JUSTICE PREPARING HUMAN RIGHTS CASES

On the evening of August 30, 1978, Congressman Fish met with Francis Keenan and Patrick Finucane, members of the Association for Legal Justice. These gentlemen were in the process of preparing a complaint to be filed with the European Commission of Human Rights on behalf of four republican prisoner's in the Maze prison, Long Kesh. The central point of complaint is that the Northern Ireland office, in denying prisoners exercise and association with other prisoners has withheld basic rights and not merely privileges as it maintains.

The "on the blanket" protesters are charging the government with infringement of Article 3 which prohibits any degrading and inhuman treatment or punishment.

A paragraph is included summarizing the functions of the European Court of Human Rights and the European Commission on Human Rights.

The Association for Legal Justice provided the delegation with a *Memorandum on the H-Block Protest and Conditions*.

EUROPEAN COURT OF HUMAN RIGHTS

Under the European Convention on Human Rights, to which Ireland is a party, an injured person may petition the European Commission of Human Rights on the ground that a State party has violated the rights set forth in the Convention. Such a petition is not admissible unless the injured party has exhausted all possible remedies before the domestic courts. If it is declared admissible, the matter is investigated in camera by the Commission, which is charged to attempt to secure a friendly settlement. If this is not achieved, the Commission draws up a report stating whether the facts found disclose a breach by the State concerned of its obligations under the Convention. The Commission or any party may refer the case to the European Court of Human Rights which is empowered to afford satisfaction to an injured person. Otherwise the report is considered by the Committee of Ministers of the Council of Europe who decide if there has been, it may prescribe the measures to be taken by the State which is guilty of such violation.

MEMORANDUM ON H BLOCK PROTEST AND CONDITIONS

The British Government in an attempt to undermine resistance against British occupation of North East Ireland and also to discredit the Republican Movement, which was the source of that resistance, decided to phase out special category status/political status. The British Government announced that people convicted for offences committed after 1st March, 1976 would not receive special category/political status. It was also announced that prisoners conforming to prison regulations and who were of good behaviour generally would earn remission of 50 percent of their sentences.

This decision lead to a confrontation between the British Government, the Prison Authorities, and the prisoners in the jails who refused to accept criminal status since they argued that they were fighting a war of liberation which has basic political objectives. Thus in 1976 the first prisoners convicted in this new situation began their protest against the refusal of special category/political status.

One may say generally that it has been a case of tit-for-tat all the way between the Prison Authorities and the prisoners. The steps taken by the British Government and the Prison Authorities however to deal with the prisoners are worthy of close scrutiny. Up until March 1978 a virtual regime of punishment existed. Every two weeks prisoners were adjudicated by the Governor for not conforming to prison regulations. Their nonconformity consisted of refusing to wear the prison uniform, refusing to do prison work of any kind, refusing to address the

prison staff as "Sir" and generally refusing to behave in any way which would bring upon them the designation of ordinary criminals. For this non-conformity prisoners were sentenced every two weeks to fourteen days loss of remission, fourteen days loss of privileges, fourteen days loss of earnings and three days cellular confinement.

The loss of earnings and cellular confinement were rather academic punishments because the prisoners were not doing any work to earn money and secondly they were already spending twenty four hours per day every day, in their cells due to the fact that they were denied exercise and association because of their refusal to comply with prison regulations. The cellular confinement made only one change. The bedding was removed from the cells at 7.00 in the morning and returned at 7.00 in the evening.

The prison authorities throughout continued tactics of harassment and victimisation and even physical violence in order to force the prisoners to abandon their protest which was becoming a considerable embarrassment to the Government who continually declared that these prisoners were ordinary criminals when in fact the reality of the situation declared the contrary. In refusing to wear prison uniform the prisoners were left with a towel or a blanket to cover their naked bodies—no shoes, no socks, no underwear, only a blanket or a towel.

The prisoners protest went a step further in March of 1978 when they began refusing to wash and to slop out their cells, which means emptying the chamber-pots which were the only toilet facilities available to them. In order to get to use the toilet facilities in the prison, they have to wear the prison uniform. The prison authorities approach in this matter has been arbitrary. The prisoners say that on occasions in the past, permission has been given to leave the cell and go to the toilet, but this is now refused. There was also at one time an offer that the prisoner could leave his cell and go to the toilet naked, but this was not accepted by the prisoners who felt that it was degrading. Furthermore, the prisoners say that when using the toilet facilities the prison officers would peer over the door of the toilet cubicle to observe the prisoner performing his bodily functions. The doors of these cubicles are really only half doors. They do not extend down to the ground, nor do they extend up as far as the ceiling.

The prison orderlies who are convicted prisoners themselves but who might be described as 'trusties' are given the work of emptying the chamber-pots of the prisoners and in return these orderlies were given extra privileges. At one stage the Prison Administration brought round breakfast at the same time as the slop out procedure was being conducted. This was obviously unhygienic. The prisoner had to leave his cell to empty his chamber pot and when he came back to get his breakfast he was told that he could not get his breakfast because he had not been there when it was brought round. Conversely if a prisoner chose to have his breakfast before slopping out he missed having his chamber-pot emptied.

This type of harassment went a stage further when the prison orderlies were given the job of going round the cells and emptying the chamber pots. The 'trusties' were assigned this task because the protesting Republican Prisoners refused to leave their cells to slop out, owing to the degrading conditions imposed and also because the morning slop out clashed with breakfast. The new procedure was that two or three 'trusties' would enter the cells along with about half a dozen prison officers and the 'trusties' would empty the chamber pots into a larger receptacle. Frequently the 'trusties' would accidentally on purpose tip up the chamber pot or knock it over so that the excrement would spill over the cell floor. This tactic increased in intensity later on when the orderlies in fact threw the excrement over the prisoners in the cells and also threw the excrement on to their bedding and around the cell itself. During this slop out process prisoners were frequently attacked and beaten up.

It was this intensified harassment which gave rise to the now well-known 'No Wash' protest for which the prisoners have been entirely blamed. It is simplistic to suggest that the conditions in which the prisoners live are self-inflicted. The situation is far more complicated than the Government would have the public believe.

It is the British Governments argument that the prisoners have abused and destroyed the best prison facilities in Europe. A closer examination tends to reveal otherwise. In dealing with the prisoners protest the British Government has been prepared to cast all standards aside in a ruthless attempt to break these men. There are now approximately 320 protesting Republican Prisoners, and many of these men have been 'On the Blanket' (a common phrase used to

describe the protest which also gave rise to the term 'blanket met') for more than a year and a large number have been engaged in the protest for more than two years. Indeed some prisoners would have already served their sentences and been released, had they accepted criminal status and conformed to the prison administration. The prisoners are confined to their cells for 24 hours a day every day of the year. They have not enjoyed fresh air since the beginning of their imprisonment. The only time they are allowed out of their cells is on a Sunday when they attend Mass clad only in prison trousers. The physical and mental deterioration of these prisoners can only be imagined.

It has been suggested on many occasions that the British Government has gone beyond reasonable bounds in dealing with the prisoners, and Churchmen, a few journalists and some politicians have argued that there should be a basic standard of treatment of the prisoners which should not be breached. This is a fundamental argument which four of the protesting prisoners are putting forward in the case which they have lodged against the British Government before the European Commission on Human Rights. This application has now been accepted and is expected to be given a priority hearing in the October 1978 session of the Commission. It will be alleged that the British Government is continually guilty of scores of breaches of the European Convention on Human Rights. The articles concerned are as follows:

Article 8: Which gives the right to privacy and correspondence.

Article 9: Which provides for the right to freedom of conscience.

Article 10: Giving the right to receive and impart information.

Article 11: Which includes the right to freedom of association.

Article 13: Which provides for the right to a domestic remedy.

Article 14: Discrimination on grounds of sex and political belief.

Article 18: Which provides that the rights of the Convention shall not be used for a purpose other than for which they were intended.

The legal proceedings in this case will involve numerous issues including infringement of prisoners correspondence which is censored and interfered with. The prisoners have no television, no radio, receive no newspapers or magazines or books. They are allowed no family photographs, theirs is an existence of deprivation and repression.

The above is a summary of the circumstances and conditions surrounding the H. Block situation. It is difficult to understand why the British Government has gone so far in its attitude and treatment towards the prisoners. Perhaps they thought they could break the prisoners and get away with it. There are many historical precedents showing the recurring conflict between prisoners and the British in Ireland. The history of British involvement in Ireland is littered with hunger strikes and prison protests. Mr. Mason has characterised himself as a hard uncompromising man. Since his arrival in Northern Ireland he has taken a hard military line which seems to indicate that he was attempting to achieve a military victory. The prisoners have become pawns in the game of political bargaining as it has been suggested that the prisoners would not get any better treatment unless the IRA called a ceasefire. This suggestion should not be discounted. The Human Rights issue should not be made a bargaining counter; Human Rights should be guaranteed as inviolable.

[From The London Times, Tuesday, August 8, 1978]

MAZE PRISONERS TO PRESS RIGHTS CASE IN EUROPE

INHUMAN, DEGRADING TREATMENT ALLEGED

(From Annabel Ferriman, Belfast)

The Government has been accused of violating nine articles of the European Convention of Human Rights, including the one outlawing degrading and inhuman treatment, by four prisoners at the Maze prison, North Ireland, where about three hundred republicans are protesting in an attempt to regain political status. They will file their complaint with the European Commission of Human Rights today or tomorrow.

Four republican prisoners in the Maze prison, Long Kesh, Northern Ireland, intend to take the Government to the European Commission on Human Rights in Strasbourg, alleging that it has violated nine articles of the European Convention of Human Rights.

The central point of their complaint, which is to be filed today or tomorrow, is that the Northern Ireland Office, in denying prisoners exercise and association with other prisoners has withheld basic rights, and not merely privileges as it maintains.

The case could become as embarrassing for the Government as the one brought against it by the Irish Government in 1971. That led to it being found guilty of "inhuman and degrading treatment" by the European Court of human rights.

It comes shortly after condemnation of conditions at the Maze prison by the Roman Catholic Primate of All Ireland, Dr. Thomas O Fiaich. After a visit to the jail he described the conditions as "inhuman".

His remarks were attacked by the Northern Ireland Office, Ulster Unionist politicians and the Presbyterian Church. His critics said he did not refer to the fact that the conditions were self-inflicted.

The Northern Ireland Office has been limiting amenities to about three hundred republican prisoners in the Maze prison, to the minimum laid down by statute, namely one letter and one visit a month, because the prisoners are refusing to abide by prison discipline.

They have been refusing for two years to wear prison clothes and since March to wash or "slop out" in a campaign aimed at regaining status taken away for crimes committed after March, 1976.

The "on blanket" protest, so called because the prisoners have been wearing only a blanket, has meant the denial of most "privileges." The prisoners have not been allowed exercise, association, reading or writing material, access to radio, television, the canteen or lavatories.

The most important article which the Government is alleged to have infringed is Article 3. That declares unlawful any degrading and inhuman treatment or punishment. The prisoners are alleging that the denial of association and exercise amounts to such treatment.

It will further be alleged that Article 9, which guarantees freedom of conscience, has been breached because the men regard themselves as political prisoners and that Article 10, guaranteeing the right to receive and give information, has been breached in that prisoners are not permitted to receive letters, certain literature, or newspapers. They will also maintain that Article 8, which guarantees right to correspondence, has similarly been infringed.

The procedure under which protesting republicans are regularly sentenced to three days' confinement in their cells in every fortnight will also be challenged under Article 6, which guarantees the right to a fair trial.

Article 8 will be quoted in alleging that, as it guarantees the privacy of the individual it has been breached by the lavatory procedures in use in all United Kingdom jails.

If the Maze case is accepted by the commission as worthy of investigation a "rapporteur" will be appointed to examine the case. The Government may be asked to reply to the allegations.

There are several precedents for the commission receiving cases involving prisoners' rights.

The four prisoners bringing the case are in their twenties. Three come from Belfast and one from co Londonderry. They are serving sentences ranging from three years for hijacking to 26 years for possessing firearms.

[From The Belfast Telegraph, Monday, Aug. 7, 1978]

H-BLOCK 4 TAKE CASE TO EUROPE

(By Belfast Telegraph Reporter)

Three of the four protesting H-Block republicans who are taking the Government to the European Commission of Human Rights in Strasbourg, were convicted on arms charges.

Two are from Belfast, and the third from Co. Derry.

The fourth man, Kieran Nugent (21), from the Lower Falls, is serving three years for hi-jacking.

In his cell at the Maze, he has been lying naked wrapped in a blanket since September, 1976, in a protest against the refusal to grant him political status.

The other three are also involved, refusing to wash or slop out their cells.

They are accusing the Government of inhuman and degrading treatment and punishment.

A lengthy legal submission and substantial appendices is being posted to Strasbourg this week by their legal representatives, Belfast solicitor Mr. Francis Keenan and former Civil Rights leader Mr. Kevin Boyle, now a professor of law at the University College, Galway.

Nugent, a former internee, and who once jumped from five floors from Divis Flats, breaking both his legs, while on the run from the Army, was the first republican to start the H-block protest.

And much of the campaign to win political status for 300 republicans at the Maze by Sinn Féin and Relatives Action Committees, has centered around him. In March 1973, when he was 15, he was shot in the chest, arms and back by gunmen at a street corner on the Grosvenor Road. A friend was killed.

He was jailed for three years in September, 1976, after being convicted of hijacking.

The names of the other three men are not yet known.

Their solicitor, Mr. Keenan, today refused to comment on the case, and the Republican Press Centre wouldn't release any of the names, "fearing retaliatory action on the men" inside the Maze.

But according to security sources, the other three men are serving time for possessing guns.

LEGAL PROCESS

The allegations that are being submitted will claim that Britain is in violation of nine articles of the European Convention in its treatment of Republican prisoners who have been protesting about the phasing out of political status for nearly two years.

The legal process will be a lengthy one, and once the submission reaches Strasbourg, a "rapporteur" will be appointed by the Commission to examine the case. Britain may then be asked to reply to the allegations.

About 2,000 complaints from all over Europe go to Strasbourg every year.

Generally only a fraction may ultimately be deemed breaches of the Convention.

And that takes a considerable period of time and paper work.

Britain, of course, has been through it all before, having been found guilty of degrading and inhuman treatment on some men picked up during the internment swoops.

It is understood Mr. Boyle and Mr. Keenan (32), have been working on the case for about nine months, and it's not the first one they have taken to Europe.

Recently the Commission agreed to investigate their submission on behalf of Northern Ireland homosexuals, who are seeking a change in the homosexuality laws here.

H-BLOCK MEN TO TAKE BRITAIN TO STRASBOURG

(By David McKittrick, Northern Editor)

Four of the protesting Republican prisoners in the Maze Prison at Long Kesh are to take the British Government to the European Commission of Human Rights in Strasbourg, it has been reliably learned in Belfast. They are to claim that Britain has committed literally scores of breaches of the European Convention of Human Rights.

Their action is certain to involve the British Government in a long and complex international legal wrangle—comparable in some respects to the inter-State case between Britain and the Republic which opened in 1971 and concluded only this year.

The solicitor for the four men will, it is understood, lodge a lengthy legal submission and substantial appendices with the Commission later this week. This will allege that Britain is in violation of nine articles of the European Convention in its treatment of Republican prisoners who have for almost two years been protesting about the phasing out of special category status.

The case will involve an examination of the two years of the authorities' handling of the Republican protest, but will also of course touch on their response to the "no wash" protest of recent months which has produced conditions de-

scribed last week as inhuman by the Archbishop of Armagh and Primate of all Ireland, Dr. O Fiaich. While some of the points raised coincide with those made by Dr. O Fiaich, it is known that preparatory work on the case has been going on for nine months, involving a much wider range of issues than his basically humanitarian approach.

The authorities will be accused of inhuman and degrading treatment and inhuman and degrading punishment of the protestors contrary to one of the European Convention's most important provisions. The complainants are also to allege breaches of articles regarding freedom of conscience, freedom of association, the right to privacy, the right to correspondence and other provisions.

Although some of the legal points raised seem certain to be rejected by the Commission, it also appears certain that a fair number of them will engage its serious attention and may ultimately be deemed breaches of the Convention.

UNWELCOME PUBLICITY

As far as the British Government is concerned, the case will provide unwelcome publicity for its delicate and protracted efforts to deal with the Republican protest which last week received widespread coverage in the British media following Dr. O. Fiaich's critical statement.

It is quite possible that changes may have to be made in prison rules and policy. While the Republican protest has won little political or widespread public support, the Commission's decisions on the points raised will, of course, be reached on strictly legal grounds.

It is understood that the prisoners will allege that the conditions in their cells at the moment were a natural consequence of the authorities' reaction to their refusal to "slop out" their toilet buckets and were not deliberately caused by themselves. They argue that the authorities have withheld not only privileges but facilities that are, in fact, rights.

Because of the urgency of the case the complainants will obviously hope to speed up the generally lengthy European legal process, which has often taken several years to reach a judgment in far simpler cases.

The four men who have taken the case include the 21-year-old man who was the first person to be denied special category status, who has been refusing to conform with prison regulations in Long Kesh since late 1976. The legal team in the case are known to be a Belfast solicitor, Mr. Francis Keenan, and a Belfast barrister, Mr. Kevin Boyle, who was recently appointed Professor of Law at University College, Galway.

Both lawyers have been noted for their civil rights work and have taken a number of cases to Europe in the past. Their most recent, in which they act for a Northern Ireland homosexual seeking a change in the homosexuality laws, was recently accepted by the Commission as worthy of investigation.

If the Long Kesh case is accepted in the same way, the Commission will appoint a "rapporteur" to examine the case, and the British Government may be asked to reply to the allegations. There are a number of precedents of the Commission receiving cases, involving prisoners' rights; in one of these in 1975, the British Government had to alter prison rules concerning visits by a solicitor following a European Court decision.

A large number of prisoners' rights cases have been lodged with the Commission lately concerning conditions in English jails. Some of these have been taken by Irish prisoners but none has dealt with such a wide range of issues.

Many of the alleged violations may serve as test cases on points which would affect a large number of European prisons. For example, the whole question of "slopping out" toilet buckets and whether the procedure represents a denial of the right to privacy will be raised; so too will be the question of censorship or confiscation of prisoners' mail.

NINE ARTICLES OF RIGHTS CONVENTION BREACHED BY UK, SAYS PRISONERS

(By David McKittrick)

The four men who will this week appeal to the European Commission of Human Rights at Strasbourg on the Issue of conditions in the Long Kesh H Block are all sentenced Republican prisoners in their 20s. Three of them came from

Belfast and one from Co. Derry. They are serving sentences ranging from three years for hi-jacking to 26 years for the possession of firearms.

Since their times of sentencing ranging over the last two years, they protested first by going "on the blanket"—refusing to wear prison clothing and dressing only in a blanket, refusing to do prison work and otherwise not co-operating with the authorities. In March they were among the Provisional prisoners who escalated their protest for the return of special category status by refusing to wash themselves or empty their cell chamber pots.

The four are now seeking to broaden the protest by giving it a European legal dimension. They will allege that prison rules infringe the European Convention of Human Rights, and that some of the regulations enforce specifically contradict minimum standards for prison discipline and punishment laid down by the Council of Europe in 1973.

LEGALLY NOVEL

Their contention is that the British Government in its administration of the H block has breached nine of the Convention's articles. Their central and legally novel argument—reminiscent of the remarks made by Archbishop O Fiaich after visiting the prison last week—is that the authorities have been withholding as privileges things which are actually rights.

The "on the blanket" protest means being subject to an almost total loss of "privileges"—no exercise; no association, no reading or writing material; no access to radio or television or films; no access to the canteen, the library or the toilets; no food parcels, and only one letter and one visit per month.

The most important article which the British Government is alleged to have infringed is Article 3—which declares unlawful any degrading and inhuman treatment or punishment. It was this article which the British Government was ruled to have broken in the case brought by the Irish Government.

INHUMAN AND DEGRADING

The details and extremely complex legal submission will argue that the British Government has been guilty of inhuman and degrading treatment in matters such as the denial of freedom of association and the right to exercise.

It will also be alleged that inhuman and degrading punishment has been used in matters such as the use of the "number one diet" (three days during which the prisoner is allowed only soup, bread and tea without milk and sugar) and the use of Rule 24 of the prison rules, which allows the authorities to put prisoners into solitary confinement for no specific offence.

Literally dozens of legal points are raised by the submissions on these and similar points, issues which have far-reaching implications in that comparable rules are in force in a number of other European countries.

Challenges will also be made under Article 14 of the European Convention, which outlaws sexual discrimination. Here the argument will be that, in Armagh women's prison, inmates also disobey rules by refusing to carry out prison work, yet are not punished in the same way.

FREEDOM OF CONSCIENCE

It will be alleged that Article 9—guaranteeing freedom of conscience—has been breached because prisoners regard themselves as political prisoners: that Article 10, guaranteeing the right to receive and impart information, has been breached in that prisoners are not permitted to receive letters, certain types of literature and newspapers, and that Article 8 has similarly been infringed in that it guarantees the right to correspondence.

Article 8 will also be quoted in alleging that, as it guarantees the privacy of the individual, it has been breached by the toilet procedures in use in all United Kingdom jails.

The procedure under which the Governor of Long Kesh regularly sentences protesting Republicans (and indeed those Loyalists who also occasionally stage protests) to three days cellular confinement in every 14, will also be challenged under Article 6, which guarantees the right to a fair trial.

EFFECTIVE REMEDY

Article 11, which guarantees the right to freedom of association, will also be the subject of submissions, as will Article 13, which says that everyone whose

rights are violated shall have an effective domestic (i.e., within the UK) legal remedy, even though the alleged violation is caused by the State or a State agency. It will be alleged that the courts, the governor, the Board of Prison Visitors and the Northern Ireland Office constitute, for various reasons, no effective means of remedy.

Article 16 will also be raised. This states that "the restrictions permitted under the Convention to the rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed". It will be alleged that, in the case of one of the four men, restrictions were imposed not for the purpose of punishment but in order to break his will.

F. POLITICAL PARTIES AND FRINGE GROUPS IN NORTHERN IRELAND

During the meeting with Northern Ireland government officials, the delegation requested background information on the political parties and fringe groups as they existed today in Northern Ireland.

Minister Concannon was kind enough to supply the delegation with the following report which reflects the situation with regard to these elements as of September 1, 1978.

This updated information will modify certain data included in other parts of this report.

POLITICAL PARTIES AND FRINGE GROUPS

MAIN POLITICAL PARTIES—UNIONIST PARTIES

Ulster Unionist Party

Generally known as the Official Unionist Party (OUP), following the split between supporters and opponents of the late Brian Faulkner's policies in the 1974 Executive (which resulted in the formation of the Unionist Party of Northern Ireland (UPNI)) the OUP continues the traditions of the old Unionist Party which held power from the creation of the Stormont Parliament in 1921 to its prorogation in 1972.

The Party, the largest in Northern Ireland, currently has seven out of the 12 MPs at Westminster (Messrs. Molyneaux, McCusker, Carson, Bradford, Powell, Ross and Craig) and is led by Mr. Harry West. It took nearly 30 percent of the vote at the 1977 District Council elections with 174 councillors elected. Other prominent members are Rev. Martin Smyth, Col. James Cunningham, Mr. Josias Cunningham, Captain Armstrong, Mr. John Taylor and Captain Austin Ardill.

Democratic Unionist Party (DUP)

Formed in 1970, the principal aim of the DUP is the restoration of a devolved parliament in Northern Ireland based on the Stormont model, with full powers over internal security.

The DUP's electoral strength fell slightly from 14.7 percent of the vote in the 1975 Convention elections to about 12.5 percent in the 1977 District Council elections, with 74 councillors elected.

Its leader is the Rev. Dr. Ian Paisley MP and other prominent members are the Rev. William Beattie and Rev. William McCrea, both Ministers in Dr. Paisley's Free Presbyterian Church, Mr. Douglas Hutchinson and Mr. Peter Robinson.

Alliance Party (AP)

Formed in 1970 by members of the New Ulster Movement to appeal to moderate opinion in both Protestant and Catholic communities, its principal aim is the establishment of a fully devolved government in Northern Ireland based on partnership between the communities.

It is the third largest party in Northern Ireland on the basis of first preference votes in the 1977 District Council elections. It has increased its share of the vote from 9.8 percent in the 1975 Convention elections to 14.3 percent in the 1977 District Council elections and has 70 councillors elected.

Its leader is Mr. Oliver Napier; other prominent members are Messrs Basil Glass, Charles Kinahan, Denis Loretto, John Cushnahan, Alex Boyd, Ivor Canavan and Lord Dunleath.

Social and Democratic Labour Party (SDLP)

Founded in 1970 following the civil rights campaign to bring together the various strands of moderate anti-unionism, the SDLP is committed to the peaceful attainment of Irish unity with the consent of the majority of people in Northern Ireland. The party has supported the concept of a developed government based on power sharing and an institutionalised Irish dimension.

The party is the second largest in Northern Ireland and gained 23.7 percent of the vote in the 1975 Convention elections and 20.7 percent of the vote in the 1977 District Council elections with 113 councillors elected.

Its leader is Mr. Gerry Fitt MP; other prominent members include Messrs John Hume, Austin Currie, Seamus Mallon, Michael Canavan, Paddy Duffy and Denis Haughey.

MINOR POLITICAL PARTIES

UNIONIST

United Ulster Unionist Party (UUUP)

Formed in 1975 by Ernest Baird out of those Vanguard Unionist Party (VUP) Convention members who split away from William Craig because of his temporary advocacy of a voluntary coalition with the SDLP, the UUUP is a small party maintaining a firmly Loyalist stance.

Set up originally as the United Ulster Unionist Movement, it stood as the UUUP in the 1977 District Council elections gaining 32 percent of the vote with 10 councillors elected.

Mr. John Dunlop MP represents the Party at Westminster. Mr. Baird continues to head the Party.

Vanguard Unionist Party (VUP)

Formed in 1973 from the Vanguard Association as the Vanguard Unionist Progressive Party, the VUP was formally dissolved in February 1978 following the application of its leader William Craig MP to rejoin the Official Unionist Party. It remains as a movement within the OUP.

Originally a strongly Loyalist movement, once the VUP reached a peak in the 1975 Convention elections when it gained about 12.7 percent of the vote. Subsequently there was a split when Mr Ernest Baird and eight other VUP Convention members left the party in 1975.

The VUP did not contest the 1977 District Council elections as a party, although those standing under the Vanguard label gained 1.4 percent of the vote with 5 councillors elected. Not all members have rejoined the OUP.

Unionist Party of Northern Ireland (UPNI)

Formed in 1974 from those Unionist Party members who followed the late Mr. Brian Faulkner's policies in the Executive, the party is committed to the eventual restoration of devolved government based on partnership.

It gained only 2.5 percent of the vote in the 1977 District Council elections with eight councillors elected.

The party is led by Mrs. Anne Dickson; prominent members include Mr. Leslie Morell and Major Lloyd Hall-Thompson.

Northern Ireland Labour Party (NILP)

A pro-Union party of long standing, it was at its strongest in the 1950s when it returned 4 members to the Stormont Parliament. It has since lost ground and has sought closer links with the British Labour Party.

In the 1977 District Council elections, it gained about 1 percent of the vote with one local councillor elected. Its chairman is Mr. Alan Carr.

NON-UNIONIST

Irish Independence Party (IIP)

Formed in October 1977 it has announced a single political objective, to secure a British withdrawal by peaceful means.

As yet untried in any elections, it is difficult to gauge the extent of its support.

Its leading personalities are Mr. Frank McManus, Messrs Eddie and Fergus McAteer, and Mr. John Turnly previously of the SDLP.

Republican Clubs-the Workers Party (RC-WP)

The Northern branch of Sinn Fein-the Workers Party, its aims are the establishment of a 32 county socialist republic in Ireland. Since 1973 it has contested all elections in Northern Ireland both local and national, gaining some 2 percent of the vote. Following the death of its chairman, Malachy McGurran, it now has 5 district councillors.

Provisional Sinn Fein (PSF)

The political wing of the Provisional movement. De-proscribed in Northern Ireland in 1974 to enable it to contest elections, it has never done so in Northern Ireland. Its political programme is contained in 'Eire Nua' published in a single document in 1972. Its president is Rory O'Brady.

• OTHERS***Ulster Liberal Party***

A small group resurrected in 1956 by the late Rev. McElroy who remained its chairman until his death in 1975, it has achieved little political prominence in Northern Ireland.

It is non-sectarian and committed to the restoration of self-government in Northern Ireland based on PR and the full participation of the two communities. Its current chairman is Miss Sheelagh Murnaghan, former Liberty MP at Stormont.

Dominion Party of Ulster (DPU)

The Dominion Party, known originally as the Ulster Dominion Group, was formed in 1975 by Professor Kennedy Lindsay who had been elected to the Convention on a VUP ticket.

Its declared aims were that Northern Ireland should become a self-governing British dominion with a resident governor-general. Independence for Ulster should lead to a federation of the UK. The party did not attract significant support and it did not contest the 1977 District Council elections. Now generally inactive, it has tended to be regarded as a "one-man party."

Communist Party of Ireland (CPI)

A Dublin based communist organization originally founded in 1933 and re-constituted in 1970, it has played no prominent part in Northern Ireland. Its chairman is Mr. Andy Barr.

United Labour Party (ULP)

Formally launched in June 1978 at a meeting in Bangor it adopted a socialist programme. It supported changes in the legal system designed to prevent executive abuse and recognised that the constitutional position of Northern Ireland could only be changed with the consent of the majority of the population. Leading figures are Paddy Devlin, John Coulthard and Bob Kidd. The party is untried and as yet has made no major impact.

PARAMILITARY ORGANIZATIONS**REPUBLICAN*****Provisional Irish Republican Army (PIRA)***

The Provisional IRA was formed in 1969-70 following a split between the more nationalistic and militaristic Provisionals and the Marxist-inclined Officials, who at a special convention in December 1969 agreed to recognize the partition Parliaments at Dublin and Stormont and in certain circumstances to participate in elections to them.

Those still adhering to the traditional policy of abstentionism set up a Provisional Army Council which formed the nucleus of the Provisional IRA.

Both factions of the IRA share the ultimate goal of a 32-county democratic socialist federal republic in Ireland but their strategy and tactics differ widely.

PIRA's chief aim is to force the British to evacuate and to obtain an amnesty for their "political" prisoners. PIRA is a proscribed organization, as are the Cumann na m'Ban (the Provisional IRA's women's organization) and the Fianna na h'Eireann (their youth movement).

Official Irish Republican Army (OIRA)

The Marxist wing of the IRA, it is like PIRA a proscribed paramilitary organization although its leaders have laid emphasis on political rather than military action.

Although they continued to be involved in terrorism in Northern Ireland for two years after the Provisionals split away, they declared a unilateral ceasefire in May 1972 which has been, more or less, observed since. They have, however, maintained their military capability as a 'revolutionary army.'

Like PIRA, their objective is the establishment of a 32-county united Ireland; but to that end they have attempted to revive class politics in the hope of attracting working class support on both sides of the community.

Saor Eire, a tiny modern splinter group with Trotskyist connections, and active in the South in 1967-70, is a proscribed organization.

Irish Republican Socialist Party (IRSP)

Formed in 1974 by the late Mr. Seamus Costello because of a growing dissatisfaction with the Official IRA's emphasis on political action and the gradualist approach to the problem of partition, the IRSP takes a more militant approach on nationalist issues, attacking Sinn Fein—the Workers' Party for their belief that the ending of partition would have to await the unification of the Catholic and Protestant working classes.

Although the IRSP denies having a military wing, it has been publicly alleged that the People's Liberation Army (PLA) and the Irish National Liberation Army (INLA) are front organizations.

Mrs. Bernadette McAliskey (nee Devlin) was reported to have been a prominent member but to have left the party in 1975 attacking Costello for downgrading the class struggle and for reverting to the "sterile nationalism of traditional Republicanism."

LOYALIST

Ulster Defence Association (UDA)

The largest Loyalist paramilitary group. Its stated aim is the maintenance of the Union with Great Britain.

Its members were prominent and active in the 1974 UWC strike which led to the collapse of the Assembly and in May 1977 it was one of the prime movers of the abortive 'constitutional stoppage' when its members were widely criticized for alleged intimidation of the Protestant workforce. Its leader is Mr. Andy Tyrie. It has recently set up the New Ulster Political Research Group to investigate possible constitutional solutions, including independence.

Ulster Volunteer Force (UVF)

A Protestant paramilitary organization founded in 1966. It has played a major part in sectarian conflict, and persons claiming affiliation have been convicted for crimes of sectarian violence. It is a proscribed organization.

Ulster Freedom Fighters (UFF)

A title assumed by several Loyalists who have admitted sectarian attacks. It is a proscribed organization.

Red Hand Commandos (RHC)

Formed in 1972 as a paramilitary organization, the RHC does not have a large following but like the Ulster Volunteer Force (UVF), persons claiming affiliation have been convicted for numerous sectarian murders. In August 1974 it declared a ceasefire but reserved the right to take defensive action in Protestant areas. It is a proscribed organization.

Down Orange Welfare (DOW)

A generally inactive paramilitary group in Co. Down which holds itself in reserve for 'doomsday', it is led by Lt Col Peter Brush an ex-Convention member, who claims a large membership.

Orange Volunteers (OV)

A quiescent paramilitary group whose members are reputedly all members of the Orange Orders.

Ulster Service Corps (USC)

A group which includes members of DOW and USCA, it is reputed to base itself on the concept of the old Loyalist Defence Volunteers (a group based West of

the River Bann and formed to defend 'Loyalists' from Republicans in a doomsday situation).

The USC came briefly to notice in mid-1976 and early 1977 when it instituted vigilante patrols. Protests by supporters at the trials of some members of the USC for such vigilante activities gave initial encouragement to those who organized the 1977 Constitutional stoppage.

Ulster Volunteer Service Corps (UVSC)

Formerly the Vanguard Service Corps it was formed in 1972 as a paramilitary adjunct to the Vanguard Association. A small organisation it has been involved in vigilante activity.

TARA

A religiously motivated, extreme Protestant, paramilitary group opposed to the teachings of the Roman Catholic Church.

OTHER ORGANIZATIONS

REPUBLICAN

Independent Socialist Party (ISP)

A breakaway group from the IRSP. Bernadette McAliskey (nee Devlin) is among the leadership.

People's Democracy (PD)

A left-wing civil rights group formed at Queen's University in Belfast in 1968; which attracted province-wide support. They were prominent in civil rights demonstrations in 1968-70. Their support has since decreased considerably. Prominent members are Messrs Michael Farrell and John McNulty.

Red Republican Party (RRP)

A breakaway group from the People's Democracy.

Irish Civil Rights Association (ICRA)

A civil rights pressure group.

Northern Ireland Civil Rights Association (NICRA)

Set up in February 1967 to campaign for civil rights for the minority community in Northern Ireland, it attracted mass support at the time.

Association for Legal Justice (ALJ)

An organisation that campaigns against alleged abuses of security powers. Prominent members include Fr. Dennis Faul and Fr. Raymond Murray.

Relatives Action Committee (RAC)

A welfare organisation for republican prisoners which is prominent in demonstrations in favour of 'political status'.

National Resistance Campaign Committee

An all-Ireland organisation formed in March 1978 to fight for the restoration of political status for those convicted of terrorist-type crimes.

Labour and Trade Union Co-ordinating Group (LTUCG)

Formed in 1974 by members of the Northern Ireland Labour Party (NILP), it is now strongly socialist and seeks to stimulate a mass workers' movement. Many of its founder-members have left the organization. Originally pro-union, it is now believed to advocate a 32 county socialist republic. A representative contested the Ballymena District Council by-election in 1977 polling about 6 percent of the vote.

Trade Union Campaign Against Repression (TUCAR)

A recently formed group based mainly in West Belfast.

LOYALIST

Loyalist Association of Workers (LAW)

Set up in 1971 by Billy Hull a shopsteward in Harland & Wolff shipyard, this group engineered a series of one-day strikes in the Province which can be seen

as the precursor of the UWC political strike in 1974. The present chairman is Mr. Bob Pagels.

Ulster Workers Council (UWC)

A hard-line but small Protestant group based largely in Belfast, it came to prominence by organising the 1974 UWC strike, and also supported the 1977 UUAC stoppage. Its leading member is Jim Smyth.

Ulster Loyalist Central Co-ordinating Committee (ULCCC)

An umbrella organisation that in conjunction with the Ulster Workers' Council (UWC) helped to co-ordinate the May 1974 strike, it comprised representatives of most paramilitary groups. The UDA subsequently withdrew from membership. The ULCCC has since advocated negotiated independence. Its chairman is Mr. John McKeague.

Ulster Unionist Action Council (UUAC)

The organisation that ran the abortive 1977 'constitutional stoppage'. It brought together both political and paramilitary groups including Democratic Unionist Party (DUP), United Ulster Unionist Party (UUUP), Ulster Defence Association (UDA), Ulster Workers Council (UWC), Orange Volunteers (OV) and Down Orange Welfare (DOW). Prominent members were Messrs. Paisley, Baird, Tyrie and Smyth. Its chairman is Mr. Robin Henderson.

Loyalist Prisoners Aid (LPA)

The DA's welfare wing, looking after the interests of the several hundred prisoners claiming affiliation with the UDA.

Loyalist Prisoners' and Detainees' Welfare Committee (LPDWC)

The UVF's welfare organisation for UVF prisoners.

Ulster Community Action Group (UCAG)

A group representing some community and housing groups in Belfast and in the East of the Province. Its chairman is Mr. Raymond McDowall.

Ulster Special Constabulary Association (USCA)

A group formed to maintain contact between ex-members of the B Specials who were disbanded in 1970.

The Workers Association

An organisation much of whose support comes from Queen's University, Belfast and which is closely connected with B&ICO, the Association strongly supports integration with the rest of Great Britain.

Messrs. David Morrison and Boyd Black are the most prominent members.

British and Irish Communist Organisation (B&ICO)

A small but articulate Belfast-based 'Stalinist' group in favour of complete integration with the United Kingdom. They have an overlapping membership with the Workers Association and with members of the NILP. Their chief spokesman is Mr. David Morrison.

Newtownabbey Labour Party

Originally a branch of the Northern Ireland Labour Party, this group broke away in 1974 because of the dissatisfaction aroused during the UWC strike, when the NILP advocated negotiation with the strikers. Never a particularly well-supported or influential body, it nevertheless gained a reputation as a ginger group in the Labour Movement in Northern Ireland. Its position has largely waned since its heyday in c. 1976.

Independent Unionist Group (IUG)

A recently formed Loyalist group based mainly in the Shankill and led by Hugh Smyth.

Ulster Independence Association (UIA)

A small group favoring independence, led by George Allport.

CHAPTER VIII.—MEETING WITH REV. WILLIAM ARLOW, SECRETARY OF THE IRISH COUNCIL OF CHURCHES

On August 30, 1978, the delegation met with Rev. William Arlow, an Anglican clergyman who is Secretary of the Irish Council of Churches, in the Council's offices in Belfast.

Excerpts of the transcription of a recording made of this meeting follows:

MR. FISH. There are a series of questions we would like to ask you, Rev. Arlow. You know, we have been seeing people sometimes at the rate of one or a group of 10 per hour, hour and a half, steadily since we have arrived. You have been billed as the man who has really the contacts with all of the groups. This experience for me has been absolutely fantastic from the point of view of the total lack of trust of one person to the next as we meet them. It is from high and low. I have never seen anything like it.

Before we get into specifics on that, I would like to know, because we are in the same church in the United States and I look to my clergy to take the lead on occasions which happens about every 10 or 15 years, like the civil rights issues. The Anglican Church was very active in the times of Martin Luther King and the march in Washington. The only reason they actually succeeded, I think, was the presence of clergy in Washington.

What is the Anglican clergy doing in Northern Ireland? Are they doing something in unison to try to resolve the issue and bring peace here and a solution?

REV. ARLOW. Well, I think it is easy to answer that one in one sentence. There is no organized action on the part of the Anglican churchmen in Northern Ireland. We are divided up, as you know, into diocese as you are in the United States as well.

One of our great achievements is that we have maintained our unity in Ireland as a church despite the fact that there is a political border. We operate on both sides of the border. This has imposed certain restraints, particularly upon the Northern churchmen because the majority of our people reside in the north, two-thirds of our people live in the north, about half of our clergy are in the north. This, as I say, has imposed certain restraints on them.

The Anglican clergy is very reluctant to take part in organized efforts to bring the troubles to an end, but they have done a tremendous amount through personal involvement in peace organizations, and even in their own pastorate activity to promote relations in the community.

For instance, I can think of one place in particular which I know very well, it is Ballemacareet which is the heart of Protestant East Belfast, the shipyard parish. In that parish, the clergy there had a very difficult time back in 1970 and 1971. Not only the Church of Ireland clergy, but the other clergy as well, acted together in order to prevent Protestant extremists entering the little Catholic conclave on the fringes of Ballemacareet, the short strand.

They went out on to the roads and linked arms and physically tried to prevent a clash between Catholics and Protestants, that kind of activity. I think, too, in their ordinary pastoral work at crucial times they have been able to say the right things, things that have prevented our people from selling out completely to the extremists and going all the way and plunging the north here into a sort of civil war situation.

I could tell you story after story to illustrate this kind of personal involvement on the part of our clergy. This is a good thing and I would support this. It seems to me it is probably the only way in which the clergy can do very much in the north at the present time. Organized action is very difficult.

Our bishops in the north have on occasions, very few occasions, spoken with one voice on issues. I have always been opposed to this because I think that our

House of Bishops should recognize the fact that it is an all Ireland body and should speak as one body on any issue that comes up.

This would give us our required balance, which I think is sort of necessary in the north here.

For example, when Archbishop O'Flaich made his statement about British withdrawal, our six northern bishops countered this statement. I took very serious exception to that because Archbishop O'Flaich was saying something which many of our people, particularly south of the border, would have supported. I thought it was wrong of our bishops to take partisan stance on this particular matter.

So a short answer to your question is that there is very little organized activity in the Church of Ireland as far as peace efforts are concerned.

Mr. FISH. You state that the majority of the Protestants will be eroded eventually. Do you mean that actually the numbers will change?

Rev. ARLOW. The numbers will change. The two-one majority ratio at the moment seems to be the thing that gives the unionist his strength.

I think it is wrong to build your policy on that majority because that majority is being decreased daily.

Mr. FISH. Because of the birth rate?

Rev. ARLOW. Exactly. And immigration is another factor in it, too. Not so many Catholics or working class people are emigrating now, they are staying put. But more Protestant professional people are emigrating.

They have taken a look at the situation and recognized there is going to be no solution in the immediate future and they say, "We are not going to bring up our children to face what we have had to face over the last number of years. We are getting out." Many of our young Protestant professional people are going.

Mr. FISH. Where are they going?

Rev. ARLOW. They are going to England. They are going to Australia and other countries, like Canada, too.

The Unionist Party policy is based on a permanent majority. This majority, as I maintain, is being eroded daily. There will come a time when the two-one ratio will go. By that time, the Ulster Protestant will have lost the sympathy and the support of Britain and, indeed, of America, the Ulster Protestants will be forced to accept an imposed solution.

I think we should abandon our defensiveness and we should face the fact as Mr. West, the leader of the Unionist party, faced some time ago, that sooner or later this island will be one and then we should go on from there and say, "When is this going to happen and on what terms?" We want to have a say in this matter. And go to the conference table and put our position.

To go now when we are a two-one majority, when we have the support of Britain, when we have a certain amount of support from America, would be the right time in my estimation and we could get the best possible deal. But the leaders, of course, don't take that line.

He would go on to say, "All right, the majority may be eroded. Then we will redraw the border." We will end up by Ulster getting smaller and smaller. That to me is the policy of the lemon. There is no future for Protestantism if we pursue that political policy. We want to break out of our defensive position and say, "We live on this island, we want to stay on this island, we want to contribute to the building of a new Ireland, what are the terms?"

Mr. FISH. I am glad that you used the word "defensive" because we have run into this, the defensive attitude of so many people at the moment you discuss something that is foremost in the people's minds. Otherwise there wouldn't be this rush of everybody to tell us their story. Yet the establishment seems to be terribly defensive.

Rev. ARLOW. I think that Rev. Martin Smith and his friends, Harry West and the others of the official Unionist Party, are playing into the hands of the Irish Government, if you like, and the Irish hierarchy.

I am absolutely convinced in my own mind that the hierarchy of the Roman Catholic Church in this country does not want Irish unification tomorrow. Too big a price would have to be paid for that. They would have to sacrifice a Catholic state and be willing to settle for a pluralist Ireland.

I don't think they are prepared to do that. Why should they? They say, "Let's wait, and if we wait, we will get what we want without having to concede very much. Let's wait until the two-one majority has eroded in the North and then that will be the time to move."

The Irish Government, I think, takes a similar view. They, despite what Mr. Lynch, the Irish Prime Minister, might say publicly about unity, I think he recognizes that it would be a very dangerous thing and a very difficult thing to absorb one million Protestants into a new Ireland at the present time.

The economic consequences of that are very serious. The security consequences of that would be equally serious. I don't think he wants that. I don't think they want unity at the present time. They are prepared to wait, too, until the two-one majority has eroded here and until Ulster Protestants have lost the few friends they have left in the world.

MR. FISH. That is why you have said the Unionists are playing in the hands—

REV. ARLOW. They are playing into the hands of the Irish hierarchy and the Irish Government. They are not the best friends of Protestantism, although they claim to be. I think we have more to fear from the defensiveness of our own people than we have from anything that the IRA can do, anything that the Irish Government can do, or anything that the Irish hierarchy can do.

MR. FISH. The Irish hierarchy is who?

REV. ARLOW. The hierarchy of the Roman Catholic Church.

MR. FISH. And when you mention the Irish Government, you mean the Dublin Government?

REV. ARLOW. Dublin Government, yes.

MR. FISH. What about the Englishmen who are running the country?

REV. ARLOW. Do they count? Excuse me. What is your question there?

MR. FISH. You haven't mentioned them. I use the word "English" to differentiate from the fact that Northern Ireland was British until I arrived here.

REV. ARLOW. Yes.

MR. FISH. I thought so. I was brought up to that belief, but they refer to the Brits as if they were something else themselves. I mean, we spent considerable time this morning with Mr. Concannon and half a dozen of his advisers. Are they not the government of Northern Ireland?

REV. ARLOW. Yes.

MR. FISH. And so I was thinking, you are talking about the interests being served, where does their interest fit in?

REV. ARLOW. I would like to know that, quite honestly. I am confused in my own mind about British interests here. We are told they have no interest really in Northern Ireland one minute, then the next minute we are told that they do have an interest here. The interest is keeping the two sections of our warring community apart, this is why they are here. Then when they are pressed on that a little bit, at least the spokesman of the opposition, the Tory Party, says, "Well, we've got to protect sea interests here. We would be afraid of something happening in the ports, getting into the wrong hands," and this type of thing.

So I would like to know really what their interest is in staying on here. There are some cynics who maintain that possibly they are staying on until such time as someone can prove that there is no oil off the North Irish coast. Once that becomes apparent to them, then they will pack their bags and go. I wouldn't take that view.

British involvement has been very helpful here in the past. I think we would have been in a civil war situation if it hadn't been for the involvement of the troops here. Personally, I would not like to see the troops withdrawn in advance of a political solution here. That would be my position.

I think that in the long term they have no future in Northern Ireland. In short they will have to go.

MR. FISH. But isn't the presence of British troops a deterrent to the Protestants' moving towards a political solution?

REV. ARLOW. It is. I would not maybe express myself in the same way as Archbishop O'Fiaich has done with regard to British withdrawal. I would tackle it from a different angle.

I think that there are dangers in that kind of approach. I would be afraid of a civil war situation. He talks about being willing to trust Protestants in that situation. But quite honestly, I know enough about Loyalist paramilitaries to know that it would be a very dangerous thing to trust them in that particular situation.

The men who are in charge at the moment might not always be in charge and a hard line element might assert itself and we might find ourselves in a position where Catholic people were being driven out of this country.

I have been in situations where that has been attempted in the past so I have a right to be fearful.

For instance, when I came to Belfast from serving in a parish in Drury in 1971, there was a plan to drive all Catholics out of East Belfast. This was mounted by the Loyalist paramilitaries.

The churches acted on that situation. They formed what was called a "Good Neighbor's Group," and as the result we enrolled 10,000 people in that group. With the action we took, we were able to prevent Loyalist paramilitaries from carrying out that particular threat. But I have no doubt that many of them think in that way.

They say, "All right, if the British withdraw, we invade the Catholic anyway, we drive them out, we are finished with this problem once and for all." I would still be worried about that. So this is why I say I would like to see British troops here until there is a political settlement.

But I would like to put it maybe another way because I believe that the presence of Britain and the presence of the troops, the economic aid from Britain, in a sense undergirds the intransigence of the Loyalist politicians. They say, "We don't have to do anything really, the British are going to pick up all the pieces, pay the bills, and so forth and so on. They have a commitment to us. As long as there is a majority here wanting the union, they will stay."

I think that has got to be shaken a little bit by the British, but I would rather they would adopt a different approach from that advocated by the Archbishop.

I would encourage the British to have a referendum here and say to our people that, of course, if they wish they could have a continuation of the British, but the majority that really counts today is not the majority in Northern Ireland, but what the majority want in Britain and perhaps secondly what the majority want in Ireland.

Take what the majority wants in Britain. It seems the majority in Britain at the present time want some kind of government for Northern Ireland on a partnership basis. And the British Government could say, "We are willing to allow the link to continue provided you accept the solution, but if you don't accept the solution, then you accept the logic of your rejection of this. You accept negotiated independence or you decide between the link with Britain on a power sharing administration basis of independence."

Mr. FISH. The link with Britain on a power sharing administration, what does that mean precisely?

Rev. ARLOW. That would mean a devolved government here.

Mr. FISH. Devolved?

Rev. ARLOW. A devolved government here. Northern Ireland would have its own government as it did in the past, but that government would consist of Catholics as well as Protestants. It would be partnership across the board.

Personally, I don't like that kind because I think that institutionalizes sectarianism and I wouldn't want that kind of solution, but I would go along with it if the majority of the people here wanted it and if I thought it was going to bring peace in the short term.

I would rather see the destruction of sectarian politics altogether and the creation of parties that are not sectarian, not Protestant, nor Catholic, but consisting of a mixture. But that is idealistic and will take a long time to get to that position.

They could say to our people. "All right, we have a constitutional crisis. You accept the British link but the price of that is a power sharing government. If you don't accept that, then you must accept a negotiated independence."

I think the majority of our people at the present time would accept devolved government on a partnership basis, despite what Mr. Paisley and the Unionists have got to say. This I would see as an interim settlement.

Incidentally, President Carter, I think, indicated that he would be willing to essentially undergird such a settlement or support such a settlement.

But I would serve this warning, that this would only be an interim settlement. It would not bring an end to violence because the provisional IRA are committed to continue the fight until some form of unity is made here, but it would be an interim thing and a halfway house to a settlement.

I am convinced in my own mind that there would be no such thing as permanent peace in this country until the problem of Irish unity has been resolved and until some form of political structure emerges which provides for that unity.

Mr. FISH. As distinct from independence for the north?

Rev. ARLOW. I think independence for Northern Ireland could be a halfway house, halfway stage toward some form of federal Ireland, but it is not the final solution.

Mr. FISH. That is very interesting. We have met with two groups of mostly Protestants, but some Catholics with priests among them, former Unionist members, and people active in the Ulster Defense Association, who are really working toward the concept of independence. And you are just saying that that is all right but it will not work.

Rev. ARLOW. As far as it goes.

Mr. FISH. It is not the ultimate goal.

Rev. ARLOW. It is not the ultimate. It is a halfway house and I think it would be unwise to look upon that as the primary solution.

Mr. FISH. But it gets you off dead center.

Rev. ARLOW. I think the other people have to come to some form of unity in this country. The federal system has been proposed, various systems have been proposed, but some form of unity that will involve Protestants, northerners and southerners, in the government of this country.

Mr. EILBERG. May I again ask why?

Rev. ARLOW. It seems to me that the extremists on the republican side will not settle for anything less. In other words, if we don't get a settlement of the political problem, then para-militaries will continue their activities and the next 50 years will be like the last 50 years, recurring cycles of violence.

I think the only thing that will satisfy the extreme republicans eventually will be a united Ireland.

Mr. FISH. They are very few. The sympathizers are numerous, but the actual activists who are committed to this violence are so few.

Rev. ARLOW. What they are fighting for seems to me to be eminently reasonable, but by fighting the way they are for this, they aren't going to get it.

I think that many people are not going to listen to their policies, their proposals. They talk in terms of united Ireland, a federal system with four provincial governments based on a federal government in Dublin. Something can be said for that especially in that it gives the people of Ulster, the Protestant people of Ulster, their own government.

We would still have a majority here. There is something going for them here. But as long as they continue shooting and bombing, people here are not going to listen to their proposals.

That is a great pity. This is a point we have made to them again and again. We have said that it is not just a matter of getting rid of the British, that is not going to solve your problem as far as Ireland is concerned. British withdrawal is not going to solve your problem. That might be a step towards a solution, but it is not the solution itself.

What are you going to do with the million Protestants that are lagging behind? What policy have you for them? How are you going to involve them in the new set up?

If the British withdrew precipitously, I believe that the Loyalist para-militaries backed by the majority of the people here would present a very solid, united front against a united Ireland and would fight to maintain their position.

It seems to me that those who want the federal solution are doing the most to prevent the federal solution from becoming a reality. They have antagonized the protestant people of the North. I don't think there is any future for republicans who antagonize the Protestants in the North. They are very difficult people, but sooner or later they are going to have to come to terms with those people.

I think they have got to understand those people a little better than they do. They are a minority in Ireland and that has got to be understood. That is not understood by a lot of people.

They are a very insecure minority in Ireland. They have been deserted by their friends the British. They feel they have been betrayed by Britain. Most unionists feel this. Most Protestants in the North feel this. They feel menaced by this government, as they call it, "south of the border," which claims that this territory is theirs.

They are afraid that one day this government will send its troops into Northern Ireland to take over what they believe to be rightfully theirs.

They are attacked by the IRA from within. They are very defensive.

So I think that anybody who hopes to get a solution by putting pressure on them is completely unrealistic. I think you have got to leave the bomb aside and the bullet aside and start making friends with them. This is not the policy of the IRA at the present time, nor is it going to be their policy in the foreseeable future.

This has all been said to them over and over again.

Mr. FISH. I would assume that if the violence ended, it would bring the day nearer when British troops would be withdrawn.

Rev. ARLOW. If they ceased the bomb, the British troops could be withdrawn to the barracks the day after.

Mr. FISH. They don't see that as the first step?

Rev. ARLOW. They don't trust Britain. They want the British army out and then they say that when the British army goes, the Irish people will sit down and talk together. We will establish our own political structures for governing this country.

But I still feel that the Protestants would react very hysterically to a precipitous withdrawal of the British army. There would have to be a political solution.

I think anybody who is optimistic about a settlement here in the foreseeable future is really an optimist. I don't think there is a solution on the horizon.

I think that we could have an interim settlement perhaps on the basis of independence or on devolved government on a partnership basis or maybe carry on with direct rule for a number of years, but the final solution is not on the horizon and won't be for quite some time to come.

Mr. FISH. You said something that we have heard before in terms of London. We have heard this expressed in terms of both London and Dublin, that each has a constituency here, one a Protestant constituency and one a Catholic constituency, and that both will not pull back from being a sort of a guarantor from their respective constituencies. This is in the context, of course, of independence.

Do you see a role for the United States in dealing with these two capitals and urging them to take their positions?

Rev. ARLOW. Oh, yes. All along, for quite a number of years now, this idea of American involvement seems to be logical. America is in a peculiarly good position here to become involved. As I have said so often, there is hardly a home on this island that doesn't have some relative across the Atlantic in the United States.

Both the republican and the Unionist sections of our community are proud of the contribution which their people have made to America.

Mr. EILBERG. I am holding here President Carter's statement urging peace in Northern Ireland, which was delivered Wednesday, August 31, 1977, in which he said as I read it that he insists that Irish Catholics and Protestants decide for themselves, the U.S. will respect that position, but there is nothing in his statement which provides for any early involvement.

Rev. ARLOW. No, nothing, absolutely nothing. It is a pity because as you say, London, Britain is part of the conflict problem here. The Irish Government is certainly part of the conflict here. I think that we need an honest broker in this situation. We need a country like America that could come in.

Mr. EILBERG. It says, "The U.S. Government would be prepared to join with others to see how additional job-creating investment could be encouraged to the benefit of all the people in Northern Ireland." But this is after the people of Ireland decide what course they want to follow.

Rev. ARLOW. Yes. We were talking about independence now, just a few moments ago. The two big obstacles to the independence movement as I see it, are, first of all, the economic one. Ordinary people are afraid to cut the link with Britain. The man who works in the shipyard, which is our major industry here, is worried about his future. It is bad enough with the British link at the moment, unemployment is very high. What would happen if Britain cut the link? His job would go.

Talking to ordinary people in the working class areas, to retired people on pensions, and that is the impression I get if the British go. They are frightened. There is the economic problem that has got to be dealt with before I think the independence movement can make any great progress here.

There is the security one. This can't be pushed to one side. There are many people who don't want the British to go, not because they like the British, but

they say, "Well, if the British army sails down Belfast Loch and say goodbye to us, in God's name what is going to happen? Even if we do have some kind of political agreement on the basis of independence, what is going to happen unless somebody guarantees us this agreement? If it breaks down and the war resumes, who is going to come in again and separate the warring factions?" Britain will not reverse the process and send the army back in again, so there must be some state or organization, the United Nations or somebody, that will guarantee the security of the new state.

I think that before the independence movement can make great headway in this country, they have got to deal with those two problems. This is perhaps where America comes into the picture again.

Mr. EILBERG. Let me read from President Carter's statement again of August 31, 1977. "The U.S. Government policy on the Northern Ireland issue has long been one of impartiality and that is how it will remain. We support the establishment of the reform of government in Northern Ireland which will command widespread acceptance throughout both parts of the community. However, we have no intention of telling the parties how this might be achieved. The only permanent solution will come from the people who live there. There are no solutions that outsiders can impose."

Rev. ARLOW. Well, I think that is true. Outsiders can't altogether impose a solution that is going to stick, but they can facilitate a solution.

The Unionists say, "We are not moving on this one, we are undergirded by the British guarantee that they are going to stay and support us." And they will not move.

Mr. EILBERG. Is it fair, Reverend, to say that you do not agree with President Carter's statement? I am not sure that I do.

Rev. ARLOW. No. What I am saying is I think he is right in saying that a solution cannot be imposed from outside, but a solution can also be prevented by outside involvement.

Mr. EILBERG. But there is nothing in his statement to indicate that we might become the honest broker in a solution?

Rev. ARLOW. No, no, he is not. That is true. But I want to say that the British are in and I think their involvement on this blank check basis, "We are here to protect you, we are here to pay the bills," and so forth, is preventing a movement towards a solution. I think they have got to ease this and say, "We are not going to stay here forever."

Mr. FISH. What would you like to see happen realistically with involvement by the United States? What is your proposal, including a time frame for the transition?

Rev. ARLOW. I don't have any particular proposals with regard to American involvement. I just say that America is the only country that I know that both sides in our conflict situation can relate to with confidence.

You talk about lack of trust. That is one of our basic weaknesses. We don't trust anybody. Indeed, we could be subjects of psychological scrutiny here. We don't trust the English. We don't trust the southern Irish. We don't trust the Catholics. We don't trust anybody.

We all, I think, both Catholic and Protestant, republican and Unionist, trust America because we relate to them.

Mr. EILBERG. I say this rhetorically and I just want to add this comment. It seems to me that Jimmy Carter as the President in this century who has most emphasized human rights is taking a position of "this is for you to decide and we are not going to intercede as we do elsewhere. As far as Northern Ireland is concerned, you fellows decide what you want to do." That is the way I see it.

Rev. ARLOW. I can understand America saying that with regard to other countries. I can understand America saying that with regard to Rhodesia and I would have great sympathy if they took up that position in regard to Rhodesia. I can't understand them saying that in relation to Ireland, especially when they have so many millions of people of Irish extraction, both Protestant and Catholic there.

Mr. FISH. Not just emphasizing the possible role for the U.S., but what would you like to see as the Northern Ireland solution step by step?

Rev. ARLOW. I think, looking at the eventual goal, I think we have got to do this. You see, we are so bogged down in the past. We think back in 1690, we don't look forward to 1990, what is it going to be like in 1990? What are we aiming for? What are we working for? What is the goal?

I would like us to establish a goal that we could all relate to and then work toward that. It is rather like a couple thinking in terms of marriage. If they can get that fixed up that they are going to be married one day, they can start out on the road and make preparations for it.

I would like to see a commitment on the part of politicians and church people, that we have done with confessional states on this island, that we don't want a Catholic state in the south and that we don't want a Protestant state in the north.

You know what DeValera said about the south, Catholic state for the Catholic people, and what Craigavon said about the north, a Protestant state for the Protestants.

We want to say no. We don't want confessional states. We are finished with that. What we want is the death of both and the birth of something new. The birth of a new Ireland, a pluralist Ireland, where Catholic and Protestant can live together in peace and harmony and work for the prosperity of the whole.

How we structure that politically, that is another matter, but that to me would be the goal that I would work towards. That new Ireland wouldn't be, as it were, an enemy of England. This is where the true Loyalist is the man who recognizes the thing that prevents good relations between the people of Ireland and the people of England is the Ulster problem, and says, once we get rid of this problem, then we will have good relations between these two countries.

Mr. EILBERG. Rev. Arlow, how does your position as just enunciated differ from the Sinn Fein position; if it does?

Rev. ARLOW. No. I am not a supporter of provisional Sinn Fein.

Mr. EILBERG. It sounds to me that you are saying something that is very close to their position.

Rev. ARLOW. It is close to their position. They have a goal, that is true. I would worry about maybe the political color of the final solution under, say, British or the Sinn Fein.

I believe that they have no possibility of getting what they want, therefore they are pursuing their objective by their own means. They are pursuing their objective by a military means and military means are counter-productive.

You don't persuade a girl to marry you by putting a shotgun to her head and saying, "You have got to marry me." You persuade a girl to marry you by winning her heart. I think this is the basic weakness in their position.

I admire their commitment to the goal. I wish there was a similar commitment on the part of people who are working for peace in this country. These men are willing not only to live for a cause, they are willing to die for a cause, and I respect that.

I don't like them being regarded as the villains of our community. I certainly reject the view that the violence which they are mainly responsible for is our problem. Churches, governments, all respectable organizations in our community are united in saying, "This is the problem, violence is our problem. If we deal with the provisional IRA, we have solved our problem." That is utter and complete nonsense.

Violence is not our problem. Violence is a symptom of our problem. Our problem is this problem of unity. How are the people on this island to live together in peace and work for their prosperity? That is the problem.

Churches don't want to tackle that problem. Political parties don't want to tackle that problem. It is too difficult to tackle. It is far better to look for a scapegoat and say that the problem really is violence and if we can put all the violent men in prison and get rid of them, or shoot them, perhaps we had better shoot them, then we have solved our problem. This is nonsense.

Because I take this particular line, I am regarded by some of my own people as being a provo-supporter.

Mr. REGIS. Reverend, the Sinn Fein people we talk to say it is purely political and they have no tie in with violence. You are talking about provisional Sinn Fein. Is there a difference?

Rev. ARLOW. I think you have got to accept on the face of it that there is a difference. At least I operate on that basis that there is a distinction between provisional Sinn Fein and provisional IRA, but to be quite honest with you, I think in practice it is a distinction that is blurred from time to time.

Personalities can move from one side to the other quite easily.

Mr. REGIS. Is that the same for the group in the south, the Sinn Fein?

Rev. ARLOW. Yes, I would think that is true. If you look at David O'Connell—I have a regard for David O'Connell. I have defended him on occasions when it hasn't been a very popular thing to do. I have risked my neck in the doing of it.

Simply because he has committed himself to work for his objectives by political means. Simply because he had agreed to work for a peaceful solution to the problem and there were certain projects that we were working together on. I defended him because of that.

But David O'Connell moves from a position of one day being Chief of Staff of the IRA and after a year in prison maybe where he served his apprenticeship of the political wing, he suddenly becomes Vice President of political Sinn Fein.

So those who say there is a very thin paper wall between the two have a lot going for them, but I operate on the basis that there is a distinction between the two and I relate always to provisional Sinn Fein. On occasions I met with members of the Army Council, but that would be in company of the provisional Sinn Fein and under their auspices.

Mr. FISH. Reverend, you started to tell us your prescription, which was to establish a goal and then prepare for it, to put aside the notion of two confessional states, but rather to embrace the concept of a new Ireland. Can you give us more details as to what you think the first step towards that should be, and the second, and the third?

Rev. ARLOW. Yes. I think you can't make it from one to the other in one leap. I think this is unrealistic. You can't do that unless we get the country into a real civil war situation where maybe America and Britain and the Irish Government would sit down at the table and put an end to it.

I don't think you can take that leap in one step. I think it ought to be a two-stage operation. The interim stage, whether it is a devolved government on a partnership basis in the north here with Catholic and Protestant working together, that could be one way of doing it. The other could be independence.

As I have said to you, there are problems in the way of independence. The thing that encourages me about some of the people who are involved in that, there are many on the Loyalist side who previously were involved in the military campaign.

I say to credit them, not enough credit is given to them for the courage they have shown in moving away from sectarian killings, as it were, a campaign of a sectarian assassination to a political campaign to convince people that they should seek independence. They have shown great courage and they deserve support.

They, I think, in the Loyalist para-militaries and the provisional IRA, I think they have got to the stage now where they would like to come together, maybe on the basis of an independent Ulster.

That could be a very exciting development, but it means that the provisional IRA are going to have to change their thinking about certain things and lower their goals a little bit and settle maybe for British withdrawal and admit the Ulsterman's right to self-determination to have whatever form of government he liked.

Mr. FISH. When I mentioned to Mr. Hannigan, assistant to Mr. Concannon, this morning that we had met with people who represent just the point of view you are talking about, the point of view of activists who are now teaching the gospel of independence, and talked in terms of an expression that they advanced to us of a meeting on mutual grounds, perhaps the United States, Mr. Hannigan poo-pooed the whole idea that this was a very small group of inconsequential elements that were not representative and that we had to work through the existing institutions and political parties. I gather you don't seem to agree with that.

Rev. ARLOW. No, I think people who talk about the size of the group and poo-pooed them because they are small, haven't got the message of the last, not even 10 years, but the last 50 or maybe 100 years of Irish history. These are the people that have the power in our community. They are men who are willing to live for a cause and to die for a cause.

A man with a gun is much more powerful than a thousand without a gun. These are the gun men. They have got to take that into account. These are the men that have been causing trouble in this country for so long and put Britain to a great deal of trouble and expense.

I don't think to say they are just a small number is wrong, but I think he is right if he is saying that the vast majority of Ulster people are not in support of the idea of independence. But I would maintain that the vast majority are not in support of this idea for the two basic reasons which I mentioned earlier, the economic one and the security one.

They would be fools if they were. They need to have some assurance about economic safeguards and security safeguards before they commit themselves to back the move towards independence.

MR. FISH. Can you comment on the British strong reliance on the political leadership of the two Unionist parties?

REV. ARLOW. Well, of course, they are underwriting that structure, those parties.

MR. FISH. The two parties, do they really speak for the majority of the protestants.

REV. ARLOW. I think they do. I think we have got to admit that they do in the present situation and they will continue to do as long as there is uncertainty about the future here, uncertainty about economic things and security and so on, they will maintain that leadership for quite some time to come.

The only way to move them is, as I say, to take the base from under their feet. They stand firm on the British commitment to this country.

MR. FISH. In the remaining time we must get on the issue of human rights in this country. We talked about the lack of trust and the contradictions that we have been faced with. One of the strongest is the direct challenge that we received to the Amnesty International Report published in June that was part of the basis of our trip here, it was totally refuted and categorically denied today by members of the government. They say it just doesn't happen, that any physical injury is self-inflicted on the part of the 300 inmates of Long Kesh.

MR. STOUT. I am sorry. Amnesty was not talking about Long Kesh, it was talking about Castlereagh.

MR. FISH. All right.

REV. ARLOW. Castlereagh, the interrogation center.

MR. STOUT. And the government has not denied the Amnesty Report.

MR. EILBERG. Sometimes I wonder whether our Consul General is in the employ of the British Government rather than a representative of the United States.

I object in the strongest possible terms for his repeated interruptions and I will not listen to them again at this interview or any other interview. So I tell you, Mr. Stout, to stay the hell out of this.

MR. STOUT. Sorry.

MR. EILBERG. Returning to the question by Mr. Fish how do you evaluate the report of Amnesty International?

REV. ARLOW. I have read report and my own feeling would be, and this is based on the contact that I have with people who have been involved in the Castlereagh center and also in Maze prison, that there is no smoke without fire. No doubt about that. I think the British would admit that.

Things have been done which shouldn't have been done, but having said that, I think one has also got to remember that tremendous pressure has been brought to bear by the churches here, Catholic and Protestant alike, on the administration, on the Northern Ireland office, and on the security forces to produce results, to get results, to get confessions, to get convictions.

Now these same people once the report is produced, back away. They provided the head of steam, as it were, which led the security force perhaps to say and do things which they shouldn't have said and done, then they back away.

I think that certainly things have been said and done which shouldn't have been said and done, both in Castlereagh and also in the Maze prison. I think that sometimes the English have shown a real understanding of the situation.

When I say that things have happened, they have happened not only to republicans but also to Loyalist and Unionist prisoners. Not just one side. You talk to Andy Tyrrie, for example, and he will give you examples himself.

I have met some of those men and I don't believe that they are telling lies. I think that Britain can't say that they are lily white, that they haven't been guilty of any misconduct in Castlereagh.

I think on the other hand, perhaps they are not as guilty maybe as some people would paint them.

MR. EILBERG. Do you think the English understand the Irish?

REV. ARLOW. No, I don't. Maze at the present is a classic example of that.

MR. FISH. They are just not going to break their will?

REV. ARLOW. Well, it is a British prison. I wouldn't be particularly proud of letting out some things that happen in a British prison if I were in charge. Say I am British and this is my prison, I would like things to be a little different.

Mr. Mason's view on this is that this is self-inflicted punishment because they have broken the rules, then we have to withdraw certain privileges. Fine. But this is part of the propaganda war. He hasn't recognized this.

This story goes out across the world, this is what happens in British prisons. People won't stop to say, "Was it self-inflicted punishment?" He should have outwitted them by saying, "Look, we make the rules here. We are not going to treat you the way you want us to treat you in order to give you a propaganda victory. We are not withdrawing privileges even though you break the rules. If you want your television, your visits, you will get them. We are not going to play that kind of game."

But the British are not shrewd enough to do that and they are the victim of a propaganda victory.

Mr. EILBERG. Rev. Arlow, on this trip we have repeatedly heard from governmental officials that they will break the will of the Irish by the force of law and that this is evidenced by decline in violence. I don't know whether that is factual or not. But do you believe that the will of the Irish will be broken by the kind of conditions that presently exist at the Maze?

Rev. ARLOW. Not by military means or by the things that Britain is doing at the present time.

Mr. EILBERG. At the Maze?

Rev. ARLOW. I don't think they are going to win the war that way. We are engaged in a battle of ideas and one gun isn't an answer to another gun. I think they are mistaken in this. I don't see the problems going away.

There is a lower level of violence now. A lot of people in our community are saying that this is a sign of hope. I don't look on it as a sign of hope at all. There are various reasons for the lowering of the level of violence and most of them the officials will admit. Mr. Mason would say, "Well, our security forces are more successful in apprehending people. They are having difficulty in getting explosives, they are having difficulty in getting military equipment, they are having problems recruiting volunteers since we got rid of political status for prisoners" and so on. The provos will admit all of this.

Mr. EILBERG. What reasons do you believe for the reduction of violence?

Rev. ARLOW. There are other reasons. I believe one strategic reason is that the provos have recognized quite clearly that there will be no British initiative as far as Ireland is concerned until after the next Westminster election.

Even if they mounted their greatest military campaign at the present time, the British government would still not move.

Mr. FISH. So there is no need for an all out campaign?

Rev. ARLOW. So there is no need for it. And I think another thing, I think they are trying or making a play for British public opinion at the present time. They are going to be very careful not to kill ordinary English people. They are making a play for Protestant public opinion in the north. They are going to be very careful not to kill ordinary Protestant people. They are going to concentrate on the security forces and they are going to try to internationalize the conflict in a way that it has never been done before. The bombings in Germany are a classic example of that.

If they kill ordinary Protestant people, then they are in trouble with the Loyalist para-militaries because it makes their position very difficult. It means that they have got to pull back out of talks and so forth and so on. So they are concentrating on the security forces.

Mr. FISH. Do you expect a resurgence of violence?

Rev. ARLOW. I think they are planning, to be quite honest with you, I think if they don't get what they want as a result of the British election in the new year, there will be new offensive from the provisional IRA and that will be the worst thing that we have ever seen in this country.

Mr. FISH. Rev. Arlow, I would just like to say, speaking for myself only, that this was one of the most enlightened meetings that we have had, if not the most enlightening to me and I thank you for this interview.

CHAPTER IX.—MEETING WITH PADDY DEVLIN, POLITICAL AND TRADE UNION LEADER

On August 30, 1978, immediately following the appearance of the members of the delegation on the Northern Ireland newscast of the BBC, the delegation met with Paddy Devlin in one of the executive offices of the BBC.

Paddy Devlin has severed his connections with the SDLP and has assumed an independent political role to eliminate the violence in Northern Ireland and search for a viable political solution with the help of the United States. He is still a Trade Union leader and to all appearances has major contacts and influence with paramilitary groups on both the Protestant and Catholic sides.

In this meeting, he advocated the program initiated by Glenn Barr and the Ulster Political Research group with whom the delegation had met the previous day.

Excerpts of the transcription of a recording made at this meeting follow:

Mr. EILBERG. I would like to get on tape that we are talking to Paddy Devlin at the offices of the BBC in Belfast, Northern Ireland.

Mr. DEVLIN. The people you see here during your visit have got to be careful. They fit in certain compartments. They are politicians, they won't say anything new. They will say something that relates to a situation that was four years ago. If they say anything new, they are frightened of you bringing it back to life in the press which will give the impression that they are moving away from their party positions.

Therefore, party politicians won't move away from their position. You will get more from people like Arlow and other people who are keen or anxious to get things moving. Therefore, they examine ideas with some degree of courage and would be prepared to put forward things to you that would be more useful to you than the ordinary politician would.

I am not suggesting that you shouldn't talk to the ordinary politician. I am just simply saying to you that if you do, remember that they are committed to sort of public roles and they won't move away from them.

Mr. FISH. Well, we have not tried to see Mr. Paisley, we did see Mr. West. But that was in the context of meeting maybe 20 other people that all were not politicians by a long shot.

Tomorrow we plan to meet with Father Faul and Bishop Daly, among others.

Mr. DEVLIN. Daly is very good, I think. Daly would be worth listening to. But there are people you should try your own ideas out on, don't just go along and receive from them. You should try putting ideas to them just to see what you can do because you used the term "honest broker." In fact, you are in that position because everybody would say that you have no iron in the fire, that you, in fact, would be the ones to put forward something that would help them reach a solution. So therefore, you are in a position where you could put ideas forward and support them if you would.

So don't listen all the time. Talk if you can. Do you want to get on to any particular thing that you would like me to comment on?

Mr. EILBERG. Yes. Well, why don't you give us what you want and then we may have questions.

Mr. DEVLIN. All right. My feeling is this, that there is just nothing moving as far as public political positions are concerned. But if one looks out the window

or one goes into the ordinary house, or one reads a newspaper, you see enormous movement. You would see it in the editorials of the newspapers. You will see it in the comments that have been made by people who don't have to worry about, as I say, a political position.

You will see it in big business. You will see it in the tariff barrier at the border. It has disappeared. There is an enormous increase in trade growing between ourselves and the south.

I got a letter yesterday where seven businessmen have approached me to bring them down to introduce them to the Minister of Commerce of the south in the hope that they can get some idea of an assurance that they can trade with Dublin.

Whereas, prior to this there were inhibitions about doing that type of thing and they are unnecessary. They are in their own minds. There is no need whatever for them to feel that they couldn't trade with the people in Dublin. As far as I can see, this is an enormous break as far as that is concerned.

There are football teams that are made up of Catholics and Protestants going to the Continent to play football. Now, this is a mere straw in the wind, but there are a hell of a lot of things at the moment showing a greater understanding between groups.

It seems to me that people are frightened, overpowered by the sustained violence and by the possibility it won't shut off quickly.

One has only to look at West Germany, to Italy to see a handful of guerrillas, armed guerrillas, who can hold up the various countries around them. If you come into Northern Ireland, two percent, three percent of the population here support armed guerrillas.

In that case, there is no way that you can stop them. In order to find a political solution here, one has to have regard for what they stand for. And whenever the solution is worked out, you must take into account what they are looking for.

The UDA, on the other hand, they come from the Protestants, they would be the defenders of the Protestants as it were, they have gone on television twice that I have seen myself, and probably more often than that, and they have said that they are prepared to go for an American parliamentary system where the checks and balances are built into institutions instead of just counting heads.

If you have what we had in 1974, a power-sharing assembly, you have six Protestants and four Catholics and one agnostic, all you are doing is digging in deep into the concrete. You can't move it. What you have got to do is you have got to get away from that and the way to get away from that is to have the proper sort of systems, where not just merely the minority, but the individual is protected by the system itself. The American system is the most appropriate one for that.

The UDA are prepared to go for that. As far as I understand, there has been an exchange of papers between them and the provos.

If, for instance, we can tie that up with the British phasing out their presence here, mind you, we have got a completely new ballgame.

Mr. EILBERG. On that area we met with the British today and their estimate is that they are prepared to go along with whatever the people want, but they are very confident that the people want the same relationship to remain.

Mr. DEVLIN. No, that is not true. There is no way that they can sustain that in a public exercise. There is no evidence whatever that there was a mandate given to that.

As I can see it, the British want out. If you look at the British electorate, you will find that all of the random samples that have appeared in all of the newspapers over the last three or four years, you will find that over 70 percent of the British people want the British people to pull out for two reasons.

First of all, that both sides are shooting their soldiers. Secondly, they are spending hundreds of millions of pounds in Northern Ireland, and there is no appreciation for it. Clearly, they want out.

In addition, if you look at the historical picture, you will find that Britain has pulled out of 23 countries since the end of the war and given something like 12 million people their freedom, and independence.

Mr. EILBERG. What do you think of the arguments that are given that they want to wait until they see whether there is oil off Northern Ireland? Also the other question of protecting Protestants in Northern Ireland? These are practi-

cal and political considerations which might cause the government to want to remain in Ireland for the time being.

Mr. DEVLIN. I think that is highly exaggerated that you are going to find oil off the North Sea. You will find gas, you will not find oil. In any case, the cost of that will be enormous.

In any case, you will find it is the oil companies themselves who will determine where they are going to dig for oil and where they are going to release it. So I wouldn't put any weight to that.

I am quite convinced of this, that if the British could pull out without convulsions, without creating a second Congo, without putting pressure on Sterling such as they had, say, in 1956 whenever they went into Egypt, and Eisenhower put the pressure on them then, if they could avoid situations such as that, I have no doubt whatever that the British would leave Northern Ireland.

Mr. FISH. We did meet with Glenn Barr and Andy Tyrie and several others who came in at one point.

And Mr. Barr's name seems to come up frequently as somebody who enjoys respect. Another group led by Mr. Allport, George Allport, came to see us, and they were talking in terms you are talking about, too. But do you think it would be worthwhile for us to pursue the idea that members of the Ulster Defense Association and the provos do meet on mutual ground? They have talked about the United States.

Mr. DEVLIN. I can tell you the very delicate position that I am in.

Mr. FISH. Do you want to go off the record?

Mr. DEVLIN. No, no. It is not you, it is these fellows from the press here. This is a private conversation on the normal course of events that I would have with you in our office.

For me to talk freely in front of the press is just madness because I've done all sorts of things and when these fellows are going to get you through the door they will be on me like a flash. They have a ring around all my contacts, they have a ring around everybody. So to some extent, I am not free here. You understand that? I can't obviously be totally frank with you. (at this point members of the BBC press left the room.)

Mr. FISH. You see, this other group, is a group in the Congress numbering over 100, which has been talking to some of these people you just mentioned.

Mr. DEVLIN. The Caucus?

Mr. REGIS. No, the ad hoc committee.

Mr. FISH. It is the Ad hoc Committee on Irish Affairs of the Congress. The two have the same idea and the same interests. It is an extraordinary concept, really, of having the two warring factions, the paramilitary groups, meet. I find that to be the most interesting aspect of this initiative.

Mr. EILBERG. I am not satisfied that the paramilitary organizations were representing anybody but themselves. Maybe a handful of people.

Mr. FISH. Well, you have got the Supreme Commander of the Ulster Defense Association.

But I mean, we don't know whether they would come or not, do we? We haven't talked to anybody in the IRA.

Mr. O'BRIEN. I have talked to all of them. They are willing.

Mr. FISH. You have? Well, there you are, there is your answer.

Mr. EILBERG. No, it is not the answer. What commitment can they provide that would be binding on x numbers of people?

Mr. FISH. Oh, I see.

Mr. EILBERG. I am concerned from that point of view.

Mr. DEVLIN. The politicians here are discredited. They are low grade. They have no courage. They have very little philosophy. There is no great loss. As time goes on, they become more and more remote to the situations.

Mr. EILBERG. Except that they are voted into office. We were told that the turnouts were light and Sinn Fein has been boycotting elections, and so forth. That is the only measuring rod that we have.

Mr. DEVLIN. Let me talk about that. The paramilitaries have got very little public support. If they go at the present time to look for a vote, they won't get it. There is no doubt about that. But all of those political parties that are operating, their vote is falling away anyway. In other words, people are fed up with politicians because there is nothing coming from them. They haven't the courage to put forward something that would solve the whole problem.

We are going slightly off here. I am saying to you that public figures are no great indication of what you are looking for in this. What will sort of change the situation is the possibility of the violence stopping.

Everybody wants the violence to stop. That will change alignments, it will change all sorts of things.

Mr. FISH. That is what they were saying, that the result of this meeting would be a joint announcement by the two paramilitary groups that the violence has to stop, that is step number one to get the British troops off patrol and back in the barracks. Step number two is to initiate all other things.

Mr. DEVLIN. Could I give you an impression? There is no way you can get more than an impression on this, obviously. You haven't tested this out. The only way it can be tested out is to do it. I mean, you have never had a situation like that. Both organizations, both defenders of the tribes have papers. You can't get them closer because everytime you try to bring them much closer, you see, they are worried about the back woodsmen blowing their top.

The only way that you can get them closer is to keep them away from publicity, is to keep them away from the influence and pressure of their back woodsmen.

I would suggest to you that what you are talking about isn't just to bring them out to America to make representations and to answer questions or make summations to the Congress. You then have the opportunity of getting them together, to talk to them.

Mr. EILBERG. Paddy, do you think they represent sufficient numbers.

Mr. DEVLIN. I would test both of them, but, I have got to recognize that there is no way that any politician or politicians will attempt to get an administration going unless the violence stops. The key to it is in their hand.

Do recall this, the Brits have always, dominated with the gunmen at Cyprus, and all the other places throughout the rest of the world over the last 10 years it has always been with gunmen rather than politicians.

Mr. EILBERG. But if this is done with the participation of the United States Government, there is in effect an understanding with the prestige of the United States Government behind it. Will the leaders from the two extreme groups, will their followers follow them in any understanding that is developed?

Mr. DEVLIN. You are really thinking of the third point that I was going to make. That the two paramilitaries get together and agree to switch off. Neither Callaghan nor Jack Lynch will do anything about it.

If, on the other hand, the American Government underpinned the arrangement and came back over to sell it, it is sold. It is a simple matter.

Mr. FISH. Say it again, please.

Mr. DEVLIN. If the two sets of paramilitaries got together and said, "Right, let's switch off," they could switch off and if nothing would happen they would be so frustrated as a result of that, that they would switch back on again.

Mr. FISH. What is the word you used?

Mr. DEVLIN. Switched off. Sorry. That is a colloquialism.

Mr. EILBERG. There would be no violence after that point in time, in your opinion?

Mr. DEVLIN. No. If, for instance, both of them agreed that they would stop violence, they could do that, but no one would pay any heed to them. Jack Lynch, on the one hand, would not accept it. Neither would Callaghan. So, therefore, these fellows would be so frustrated in the course of a fortnight or a month, they would start again.

But if, on the other hand, the whole arrangement was underpinned by the American Government, there would be no problem whatever of the American Government getting the other two governments to accept that because to some extent that is a guarantee from President Carter that in fact they should switch off and the terms of the switch off would be set out. Do you understand?

The honest broker thing comes into this.

Mr. EILBERG. But the President has already said he won't do that.

Mr. DEVLIN. Then the American Government should do it.

Mr. FISH. You are saying that if the paramilitary groups take the initial step, then there is a role for the United States to put pressure on London and on Dublin to back off from their constituencies here, is that what you are saying?

Mr. DEVLIN. No, what I am saying to you is there has to be a guarantor or someone to underpin the settlement. The person or the people to underpin the

settlement are those who are trusted by both sides. That then would be the American Government.

Mr. FISH. How do we do this?

Mr. DEVLIN. I don't know the details of how it can be done, but I know that it can't be done by anybody else.

Mr. EILBERG. Paddy, here is the statement by President Carter on Wednesday, August 30, 1977. Just to be sure that everyone is following this, I am just going to read a few lines.

"The U.S. Government policy on the Northern Ireland issue has long been one of impartiality and that is how it will remain. We support the establishment of a form of government in Northern Ireland which will command widespread acceptance throughout both parts of the country.

"However, we have no intention of telling the parties how this may be achieved. The only permanent solution will come from the people who live there."

Mr. DEVLIN. Yes, but that is not the point that I am making. The point I am making isn't that he should come in and interfere. The point I am making is that they agreed to knock off and asked him voluntarily to deliver the thing for them. That is a different kettle of fish.

Mr. EILBERG. I agree with you. I mean, I wish it were like that but I read into this language that Jimmy Carter is saying, "I have no intention of stepping in, you fellows, you work it out yourselves, and then I will try to get some industry in there."

Mr. DEVLIN. Yes, but there are two roles. There is one that he is frightened to be placed in a situation where he comes in and tells everybody what to do. Now, he doesn't want to be placed in that role.

But if on the other hand all the components that are involved in the violence go along to him and ask him voluntarily to, not adjudicate, but to accept their agreement and deliver it, nobody else can do it.

Jack Lynch can't do it, because the northern Protestants would be upset. Callaghan can't do it because to some extent they are both belligerent parts of this. Jimmy Carter is the honest broker. Carter and his Government—that's right, it is a different thing, a different role. It is a different role, a different ballgame.

Mr. FISH. It may be a role that has to be thrust upon him by Congress?

Mr. EILBERG. In your opinion, how do we go about doing this? I would like to do this.

Mr. DEVLIN. You do it in America. You remove these fellows from their environment, from their pressures.

Mr. EILBERG. We do it in America?

Mr. DEVLIN. That is right.

Mr. EILBERG. Who are we? Who convenes this?

Mr. DEVLIN. You do it in America.

Mr. EILBERG. Me, Josh Eilberg?

Mr. DEVLIN. You are one of the fellows.

Mr. FISH. The ad hoc committee in the Congress, I think it should be a Congressional initiative.

Mr. EILBERG. There are restraints upon us.

I mean, in terms of something very specific and practical as Paddy is talking about, perhaps we should do what Paddy is saying but who are we is my question.

Mr. FISH. This is an educational experience for me, this trip here. Could somebody tell me, and perhaps you are the best one to do it, why is the Dublin Government so opposed to any movement up here?

Mr. DEVLIN. It is an easy one. You were asked that question tonight (on the BBC broadcast) and you answered it, as far as I can remember. They asked you, "Were you only bringing jobs over here for Catholics," is that right? Do you remember that?

Mr. EILBERG. No, no. There was no reference to Catholics or Protestants.

Mr. DEVLIN. Let me take it from there if I may.

Mr. FISH. Maybe that was the inherent question. We never heard of the company, they mentioned, so we didn't know what the question was.

Mr. DEVLIN. Let me explain to you what is going on here.

Let me tell you exactly how all this fits in. All the Congressmen that come over here, all the Senators that come over here are thought to be coming over here because certain people in the U.S. wants to do something for the Catholic tribe.

The impression is given because of the job that Hume has been doing or that the Irish Government has been doing that in fact all Americans lined up because of a fear for the Catholics. This is disastrous to let the impression go on. That is the reason why there is the DeLorean Motors case.

I wrote an article and said, "Don't be daft, don't be crazy. It is not because of religion, it is because the man is going to make cars. We are getting jobs and as a result of that it will help us to reduce the number of people unemployed, but that is way off the point.

Mr. FISH. But has the background of the DeLorean case anything to do with the religion of the employees?

Mr. DEVLIN. Yes. Everybody sees it for one tribe or the other.

Mr. FISH. What were the DeLorean jobs? Were they for Catholics or protestants?

Mr. DEVLIN. If they don't talk to the Irish Government, then it would appear that the Irish Government loves the Catholics up here and don't care about the Protestants. Which means that the entire Catholic vote comes out for John Hume. Therefore, the Protestants will continue on the Catholic-Protestant alignments. They want to keep the Catholic-Protestant alignment.

Mr. FISH. They, being the Dublin Government?

Mr. DEVLIN. Yes, and John Hume. Whereas, Glenny Barr and myself, we would want to break all the Catholic-Protestant alignments up and create new alignments on the way in which wealth and income is distributed. You know, social democracy stuff, and Western European. We believe in a planned economy. We believe in better health services. We believe in treating everybody in the community equal.

There are certain vested interests who want to keep them separate on a religious basis. Unfortunately, it happens that the Irish Government are misguided about this and they are supporting John Hume who is on that bent. Is that clear enough now?

Mr. FISH. It is getting there, yes.

Mr. DEVLIN. Well, one character came out and he says it was for all Catholics and that the Protestants would build elsewhere. I came out and had to explain to them that the jobs would be for people who could do the highly skilled work and they wouldn't be for Catholics, but they would be for people who were unemployed with the skill to do that.

Don't let me lose you in that one. Let me sort of come back on to the main thing and it is this. Everybody that comes in here is assumed to come in to look after the Catholics and to hell with the Protestants? Is that clear?

Now, John Hume, I am sorry, he is not exactly my favorite. Hume is very well in with Jack Lynch. They wouldn't let the Protestants put the point of view that Glenn Barr and these fellows are putting because I tried to get them in to do it.

The whole idea is that these fellows are lined up and they are preventing Protestants from going down to Dublin and talking to members of the Irish Government. That is the main point.

Mr. DEVLIN. Right, now, that means that the impressions given is that you are all Catholics and you are coming in here to work for Catholics.

Mr. EILBERG. Mr. Fish is Protestant and I am a Jew.

Mr. DEVLIN. That is why I didn't want to fall into that trap and that is why when they said you were coming here—

You see, the impression is given that you are coming into do an Irish alignment thing. The caucus, you see, is lined up allegedly in the same way. So the impression is given that all Americans are all in favor of the Catholics and no one cares about the Protestants.

One of the reasons I left the SDLP is over their attitude to the Protestant sector of the community and that is the reason why Glenny Barr and I are so friendly and that is the reason why I have an in with the UDA and with all of the para-militaries that talk to me.

That is the reason for it, and anybody coming in here with new industry, the impression is given that if it comes from America, it is only for Catholics and Protestants don't get anything.

The President of the United States would be completely different. He would be regarded as someone who is well balanced.

I remember going to a football match, you see, and the Celtics represented the Catholics and Linfield represented the Protestants, you see. I was sort of clap-

ping for the good football, you know. The spectators on each side were watching me, I don't know who it was, it was a few years ago, and they heard me clapping for Celtics when they played well. And they heard me clapping for Linfield when they played well. One guy said, "What are you ? Are you an atheist?" [Laughter]

Mr. EILBERG. Do you think that Congressional sponsorship of the meeting will be sufficient or would be meaningful? I just question this because we are in no position to bind the Administration at all. For it to be meaningful, it seems to me that we need the leadership and the leadership, to my knowledge, is clearly not sympathetic to doing anything at this time.

Mr. DEVLIN. I don't know what the mechanics are that you would have to set up nor indeed know what sort of reception you would get whenever you sort of say the things that I am trying to say. All I am saying to you is what is needed.

I reckon that we are just going to drift on and drift on and we are going to have the same violence when in fact the impulse for stopping the violence is here. We need it off, the possibilities are we can get it off, but we can't do it ourselves. No way can we.

The people who are the key to it will be the para-militaries. There is no way you can put an administration up if the paramilitaries still continue the violence.

Let me explain to you how they can stop any administration coming in. When we engaged in talks on two occasions, and when we had a power sharing, that was stopped because of paramilitary violence. It was stopped because the Catholics would shoot Protestants and then Protestants would shoot twice as many Catholics, and then because of the tribes and the loyalty to the tribes, they then pulled back out of it and stopped talks.

I am saying to you, if there was any serious possibility of putting an administration up, that they would do the same thing. The politicians here are so frightened of that type thing and so tied to their own tribal instincts that they will pull back.

Therefore, if there is violence, we can't get anything going. The only way we can get something going is to stop the violence. The violence is the key to it. If the the political violence disappeared, the other violence can be taken over by the police. That is easy. That means the British army is out.

It means that if, for instance, in my area where some fellow has done a rape, or some other character stole a television belonging to an old age pensioner, if a soldier goes into arrest him, he is a patriot. Right? But if the police go in to him, he is a rapist or some one who has committed larceny, which is the ideal situation. That means we can get things switched off and we can stop them out right.

So the violence has to stop and an administration can go in. If it is based on the American system, it is ideal. Glenny Barr has a plan. The UDA have accepted it. The provos haven't turned it down. What we would need then would be to have the Brits sort of phase out and for the prison population to be sort of phased out.

The way that you do it with the prison population is easy. You don't let them out altogether. You phase them out. Five percent, 10 percent, over a fortnight, over a month, over two months. That way those who are out will make certain that those who are left in will be protected because there will be no violence. The only way to get them out is to make certain that the violence will stop for six months or a year. Phase it out.

You have all got a certain amount of hostages and you are letting them out in dribbles, you see?

Mr. EILBERG. Let them out to go where?

Mr. DEVLIN. Just to go home. If, for instance, you keep a certain number of them in, the rest of them will make certain that there is no violence until they get out. By that time all of the active servicemen will have broken up and will have disappeared.

In the meantime, they need an opportunity of going public, of becoming a public political party so that they can have platforms, so they can put forward policies for elections, and run elections, the same as everybody else. He feels tranquility and normality dead easy.

But the problem is that even if the two paramilitaries got together, there is no one begging up here to deliver it and the other two governments can't deliver it because they would activate a certain amount of hostility, a certain amount of what you don't want. But the people with the clean hands, the Americans, the American system of government and the Americans, if they can organize the thing, could very obviously deliver it.

I have said that right back in January when Senator Eagleton was here.

Mr. FISH. When you say the Americans can deliver, you are talking about the second phase, am I correct, that you mean to say that American pressure on Dublin and London to back off from the influence that they have on the Protestants and Catholics, and so forth.

Mr. DEVLIN. That is right.

Mr. FISH. In terms of protecting their constituency.

Mr. DEVLIN. That is right. You not only underpin the plan to stop the violence, but you also underpin according to the President's statement, the economic revival that follows, of course, is going to be a big growth factor in our economy because at the moment we are only producing about 65 percent of what we produced in 1970. The whole thing will all come flowing back and will come back with a confidence with the capital that President Carter has promised.

Not only that, but you will also get the Germans and the Dutch and other people from the EEC coming into with their capital for investment purposes, which you haven't got. We have no private capital. We haven't had private capital for years and years.

Very obviously there is something like 5 thousand million pounds owned by Northern Irish nationalists outside, and it will come back. I have no doubt about it.

Mr. FISH. We have heard this from everybody, don't worry about the economic issue, it will flow.

Mr. EILBERG. What concerns me is that people have spoken to us as though we are far more important than we are. We are not that important.

Mr. FISH. We can't promise anything.

Mr. DEVLIN. You could be, if only you realized your importance. There is nobody who would quarrel with an American if he comes in and gives me an idea. But Brit comes in and I will tell him to buzz off. I don't want to listen to him. He is responsible for all of this. If someone from Dublin comes up and tries to tell a fellow something he won't listen to him. We won't listen to him. You are neutral.

Mr. FISH. They are coming to us, Josh, to take this message. We may not succeed but it seems to me that this is the best hope yet and referred to us by enough sources. The people who initiated it to us originally seem to be highly respectable. No one else is making these moves. It may work, but I am convinced that what he says is the way to go.

Mr. EILBERG. I don't disagree with you.

Mr. FISH. You are just saying that we shouldn't hold out to Paddy the hope, "Thank you for telling us, we are now going to go back and do it."

Mr. EILBERG. I don't want to misrepresent who we are or what we are in a position to do.

Mr. DEVLIN. I have said to every American that comes within earshot. I have done it. I have started off in January with Senator Eagleton and the other people that followed him. I told them the same thing I have told everybody. My line is absolutely consistent all along the line.

I have explained to you my approach on this. People in the south of Ireland imagine that you are going to solve this problem, saying, "Oh, you just have to join in the Irish Republic." No way that the northern Protestants are going to join in the Irish Republic. No way.

The proof is as far as Sunnysdale was concerned, and that was a fairly mild sort of integration of both communities, there has to be a breaking up of the issues.

If the British and Irish symbols are neutralized and pushed aside, we can then build loyalty up into our own communities. We then begin to work for our own community. If we do that, that means that we are building up a comradeship, a friendship, a citizenship if you like, within our own community that will stop the violence and will create a counterforce against violence whenever it breaks.

Mr. EILBERG. To what extent are you talking for the Catholic community at this moment?

Mr. DEVLIN. I am not. I am a professional politician.

Mr. EILBERG. Let me put it another way. Do you think that the majority or bulk of Catholics in Northern Ireland support what you are saying?

Mr. DEVLIN. Oh, no, I don't. But let me say this to you—

I probably have the largest vote ever recorded in a local government election the last time around.

Mr. EILBERG. That is why we need your advice in terms of political savvy.

Mr. DEVLIN. Let me explain to you. I don't run after them all. If I see a thing, I get out and say it, this is my view of it, whether it is right or wrong. People tend to support me because I have a fair amount of perception, but in addition to that, I have a lot of courage. It could be courage talking, I don't know. I am just simply saying to you that the best way to solve our problem is to try to neutralize the symbolism and the nourishment that the symbols give to the hatred that exists in the community.

After having got that, we can evolve into a proper community. The important thing is that we are in the EEC and if we are in the EEC, the EEC has got an economic union going, but we could also have a political union going. That being the case, we don't need to work with federal solutions.

Mr. FISH. We are, two members out of 435. Just like two members of the Parliament or maybe the correct ratio would be three out of 600 and some, and to let you know that we are not going to go back and be able to wave the wand and solve these problems.

Mr. DEVLIN. I would accept that.

Mr. FISH. I hope you understand that. I think that is what Josh Eilberg is trying to impress upon you, please don't think that we have that kind of power.

We are learning. I have learned a considerable amount and I think those who have set up this series of days, four days and five nights here, have given us an exposure that is extraordinary.

Mr. EILBERG. I think the best thing we can say is that we will carry the idea back and we will participate. We will participate.

Mr. FISH. I am going to participate to a far greater extent than I ever have before, I can say that.

Mr. EILBERG. I would like to know if my own community, the Philadelphia Catholic community that is interested in these problems, is in tune, that they are sufficiently advanced in their thinking which I have no way of knowing right here because this is the first I have ever heard of this idea on this particular trip.

Mr. DEVLIN. Really, is that so?

Mr. EILBERG. Really, yes.

Mr. FISH. It is a battle of ideas.

Mr. DEVLIN. Absolutely.

Mr. FISH. We heard that today from Rev. Arlow, didn't we?

Mr. DEVLIN. Oh, Arlow is good. He is very good. He is the sort of person that should be spoken to all the time. He has a good brain. He understands people. He will think out everything on his own.

What happens to us in our community is that we tend to let our grandfathers do the thinking and just accept what our grandfather says.

Mr. EILBERG. Have you or anyone else interested in this idea talked about this in Washington? You have talked to visitors that have passed through here, but has the idea been carried over to the United States?

Mr. DEVLIN. No. I have no contacts whatever apart from Paul O'Dwyer and the Trade Union official, Teddy Gleason. One or two like that.

Mr. FISH. Where is he located?

Mr. DEVLIN. Teddy is the general president of the Longshoremen's Union in New York. I am an official of the Irish Transport and that is how I got to know him.

Mr. FISH. Let me ask you this question. I didn't realize there was a time frame here because it bears on what you said, Josh, in terms that there is a lot of work that has to be done. Do you feel, Paddy, that the provisional IRA is waiting until after the October elections to the British Parliament and that perhaps if there is no change after that that we can expect renewed violence in greater dimensions in this country?

Mr. DEVLIN. I would think that I could answer two questions there because there was a very obvious one. If Callaghan loses this election, the possibility is that you will not be able to deliver a plan like this.

Margaret Thatcher is the last of the great colonists. She wants to colonize everything, including America, so watch her.

So the thing is that if she comes back there is no question whatever of the Brits pulling out. They will cling on here and they will throw everything in. That is your big, time factor. That is the Sword of Damocles over our heads.

As far as the provos are concerned, once you begin to talk to the provos they realize that they are going to have to knock off and they want to give the impression that this has been a military conquest on their part and they immediately put the boot in. They immediately increase their violence.

They have done that and that is what has happened over the last 50 weeks because I have sort of been able to help with Barr to get papers exchanged with them.

So in anticipation of their engaging in serious talk or meaningful talk, they'll increase their violence and I reckon that is what is going on at the present time.

Mr. EILBERG. But Arlow said the opposite a few hours ago, that the violence had been decreasing—

Mr. REGIS. No, but he says in case the Tories win the election?

Mr. DEVLIN. It has gone up in the last couple of weeks, but gradually it has fallen away over the last year or so. There is no doubt about that. The volume has fallen very clearly. But because of the possibility of peace, they then escalated, and you will find, if you look at newspapers, you will find them sort of going all out for taking military lives. Booby traps have been set all over the place over the last fortnight. They are going off. It is just by chance that they are not hitting soldiers more often.

Mr. EILBERG. I can understand that. Why is this phenomenon taking place?

Mr. DEVLIN. Well, just in the event of a shutting off, the provos want to give the impression that it was because of the volume of violence that they are creating that the military have cleared out. In other words, it is military conquests that are making them leave.

They always do it. Once they talk of peace terms, once there is a possibility of knocking off, they always increase their violence.

Callaghan wants out, he wrote a book about six years ago, I wrote a review on it, and Callaghan in the course of the book said that the British must leave Northern Ireland. Wilson, prior to that, said you will find that in all cases where Britain has pulled out of colonies that they held for a 100 years or so, it has always been the Labor Government that has taken the initiative. They are not the Imperialist Government and they have always pulled out. Therefore, one can assume that the Labor Government would pull out more readily than any other government would.

In any case, the money they would save in Northern Ireland they would try to use it by putting it into education, into health because at the moment they have no great growth rate in their economy and they have to find money for services by sort of pulling it back off the army particularly.

CHAPTER X: MEETING WITH REPRESENTATIVES OF THE IRISH INDEPENDENCE PARTY

On August 30, 1978, the delegation met with Messrs. John Turley and Pat Fahy of the Irish Independence Party at the Europa Hotel.

Excerpts of a transcription made from the recording of this meeting follows:

Mr. FAHY. My name is Pat Fahy. I am a member of the Irish Independence Party. The primary aim of our party is by whatever political means open to us, to effect a British withdrawal from Northern Ireland.

We seek a British withdrawal because we believe that that is a precondition to peace and progress in Ireland as a whole.

We see the British presence as the primary cause of division in our country over a long number of years and we think that only when the British presence has been removed can we realistically engage in dialogue with other people in this country with the view toward working out a permanent settlement to the very old Irish question.

Mr. EILBERG. What religious faith are you?

Mr. FAHY. I myself am a Catholic, but our party is a non-sectarian one. Indeed, Mr. Turnley who is with me here this evening is a Protestant. So we don't consider ourselves——

Mr. TURNLEY. I am John Turnley. I am a Protestant. I used to be in the Social Democratic and Labor Party, SDLP, and I left that party and joined the Irish Independence Party. Both parties, non-sectarian parties, open to all religions. Do you want to ask me a question, Congressman?

Mr. EILBERG. In a moment. Why did you separate from the SDLP?

Mr. TURNLEY. I left the SDLP because at the time that I joined the SDLP I believe that the primary aim of the SDLP was to remove the British presence from Ireland by various means that might take a long time, and set up diplomacy, et cetera.

But after about five years in the SDLP, I was convinced that the SDLP actually was a six county party which could only exist in a six county set up, the six counties being Northern Ireland, as you know, the separated part of Ireland.

They could only exist with the help of the British. The British, in fact, liked them because they were the moderate Catholic, although they are mainly a Catholic party. They are not totally, as I said earlier, a Catholic party, but they are mainly Catholic party and they were a very useful type of party for the British to have.

If I may continue on from what Pat Fahy was saying.

Mr. EILBERG. May I just interrupt by asking the question, what would happen if the British were to withdraw? What could we expect in terms of violence or non-violence?

Mr. TURNLEY. Well, to begin with——

Mr. EILBERG. Immediately that is.

Mr. TURNLEY. Yes. We have to remember that we have been having a situation of unrest here for about 10 years now, during which time far more people have died, many, many more than died in the whole of the Irish civil war.

It would be a rash man that would say that there would be no violence whatsoever with British withdrawal, or even an announcement of a British withdrawal. But I personally don't think, and my party doesn't think that it would be significant, that it could in any way compare with the deaths which have already gone before and which will continue if there is not some measure taken, some strong measure such as a declaration of intent by the British to withdraw from this part of Ireland.

We don't necessarily want them to do it immediately. I don't think anybody wants that. Even the provisional IRA don't want the British just to suddenly get out and go. We have got to have a period where we discuss these things, but if the British say they are going, then discussions and conferences are going to be so much more significant than they have been in the past.

I was elected to the Northern Ireland Convention a couple of years ago and we discussed all these various possibilities. But the fact that the British were still here made the Loyalists, the Protestant majority, unwilling to compromise in any way whatsoever.

We believe that if the British bayonets are taken from the backs of these people—in other words, they are not getting the back up, the military back up, they will be much more willing to talk with Irish throughout Ireland, north and south.

Mr. FAHY. If I may come in just on the point that it is a very reasonable point to ask as to what happens in the event of a British withdrawal, will it stop, say, murder of brother and sister. I think people should be very keenly aware of the fact that we have had a civil war now for about nine years, during which approximately 2,000 people have died.

To continue the British presence and extend those figures over another 10 years, 15 years, so long as you want to extend those figures, and you will have a dreadful situation, a continuing carnage, loss of life, maiming of people. That is what a British presence will mean looking into the future.

What we seek is a British withdrawal. It will end that sort of cycle which has been going on in Ireland now for so many years. We are deeply convinced of the fact that only a British withdrawal will lead to realistic dialogue.

As John has said, and I think is very true, where you have a situation with the British gun in Northern Ireland on one side or the other, realistic dialogue is not possible. Only when the British prop has been removed can we talk together and hope to achieve peace.

Mr. EILBERG. How do you expect or what is involved in getting the British to withdraw? What would you like to see? What procedure would you like to see followed?

Mr. FAHY. I think that we all must be realistic in the sense that we must accept that British withdrawal will not happen overnight. But what we want from the British Government is a declaration of its intent to withdraw from Northern Ireland.

Mr. EILBERG. We were with several of the Ministers this morning and from their conversation with us, taking their conversation at face value, they have no intention of withdrawing and certainly did not indicate that it is a possibility at all. In fact, they said that the voters in the last few elections had and would continue to vote for the continued British occupancy.

Mr. FAHY. I think it is important to note as far as that is concerned that what the British politician says in relation to Ireland and what he does can be two completely different matters.

One has only to look at the recent poll carried twice in the Daily Mirror, which is almost the official Labor daily newspaper in England, which shows an overwhelming support among the people of England for a withdrawal of troops from Northern Ireland.

We believe as a party that that is not just a random check, it is not just something which happened to appear in the Daily Mirror. We believe that the British Government is floating a kite, as it were, to gauge reaction among their own people to the idea of a British withdrawal. We think that the feeling among the British people who are losing sons and brothers in the army here, their feeling is moving greatly towards the idea of favoring a British withdrawal from Northern Ireland.

The British may talk about the viewpoint as expressed in the elections, which is the second point you made. I think first of all it is fair to point out, and I think I would ask anybody considering this question to look at any elections that have been held here recently. In most of them there has been an abstention rate of up to 50 percent in some of those elections.

In other words, the elections in which those people have voted are by no means representative of the mass viewpoint of the people.

Mr. EILBERG. Doesn't this represent a boycott from the Sinn Fein?

Mr. FAHY. It represents, I think, a sense of revulsion on the part of people who have seen the British attempts to deal with the Irish situation over so many

years and who have watched its abysmal failure leading to many deaths over this last number of years.

Mr. EILBERG. You use the word British as if you were not British.

Mr. FAHY. I am not British.

Mr. EILBERG. You are not British?

Mr. FAHY. No, by no means.

Mr. EILBERG. I thought Northern Ireland was part of the British Isles.

Mr. FAHY. Without becoming too dogmatic about it—

Mr. EILBERG. I arrived here thinking it was and then I see signs, "Brits go home," and people talk of Brits as if they were somebody else.

Mr. FAHY. I think what you have to realize is, in historical terms, this is part of the island of Ireland. So you start from there. Then if you trace the British conquest of Ireland right from when it started way back in 1066 or perhaps even earlier right up through the centuries until it was colonized in the active Union in 1804. At that stage the British conquest of Ireland was complete. But then it was reversed to some extent by the Irish rebellion or rising of 1916, followed by the War of Independence ending in 1921.

So Britain at that stage left the 26 countries of Ireland, but she still remained in the North of Ireland, hence the idea that this is part of Britain.

Mr. EILBERG. Is the Irish Independence Party for independent Ireland or do you look for unity among the people of the entire island?

Mr. TURNLEY. Independence means that there would be no British presence in Ireland. It does not necessarily mean a united Ireland.

Mr. FAHY. That is right. I think what we are really saying is we want an Irish solution to an Irish problem.

Mr. EILBERG. Are you working with the people like Glenn Barr with the Ulster Defense Association, the New Ulster Political Research Group, and with the Ulster Independence Association?

Mr. TURNLEY. We have had some contacts with the Ulster Independence Association, but we have had no contact to date with Glenn Barr who would be considered an extreme Loyalist because he was one of the leading figures, if not the leader of the strike which crippled the whole of the six counties and brought down the former executive.

I am not going to say that we wouldn't under certain circumstances work with Glenn Barr with regard to independence, but we have not any contact with him at the moment.

Mr. EILBERG. Your political party has never faced an election, is that correct?

Mr. FAHY. That is quite correct.

Mr. EILBERG. Did you have a chance to do so?

Mr. FAHY. No, we haven't had a chance. We will be fighting our first election which are the elections for the Westminster, the English Parliament, in October.

Mr. TURNLEY. It is not strictly fair to say we have never faced an election. We had a council by election, this is for local legislators, and we did fairly well. We didn't, of course—it was a very Loyalist type area but we ran third behind the two big Unionist parties and we came above Labor and the Alliance Party in that particular bi-election.

Mr. EILBERG. We keep hearing this criticism brought up. One of the first people we met when we got here dismissed your group and others by saying, "Well, they have never stood for an election."

Mr. TURNLEY. That is true. But there are so many things. One thing I want to mention that you said about the people you have been meeting, these Ministers or whoever they are, I don't know, Mason, Concannon, et cetera.

Mr. EILBERG. Not Mason, but Concannon.

Mr. TURNLEY. Concannon, yes. That is just a typical person who is in power here at the moment. You have been saying that they had no intention of leaving here but they are bound to say that. Until they decide to sell the idea of getting out, we don't know when they will, they will deny it up to the very last minute. I mean, they couldn't afford not to. Just like devaluing the pound or something. Wilson denied it and denied it up until the last minute because what would happen if they said anything else?

Mr. FAHY. I think it is fair to point out, although it is not perhaps directly relevant, the British Government said on numerous occasions they would never talk to the IRA. This was said publicly and they gave a guarantee. Yet they did talk to the IRA on several occasions.

Mr. EILBERG. Do you want to participate in a meeting with other parties under the sponsorship of the United States or any other friendly country to help develop a coalition and perhaps the support of the United States? Do you have that in mind?

Mr. TURNLEY. Yes, certainly.

Mr. FAHY. Yes. We would very, very much like to do that. Our aim in the party is to try to do what we can in our way to achieve a lasting peace in Ireland. If that means meeting people from various persuasions at a particular venue, and if it means accepting help from you, yourselves in the United States, we would be only too glad to accept that help because we believe every other option has been tried and now is the time for real true dialogue on a lasting basis.

Mr. EILBERG. You realize, of course, that President Carter has said that it is his desire that the people of Northern Ireland solve their political problems first and then he would offer opportunities for industry and jobs on the part of the United States. So from his statement one year ago today, I believe, there is nothing in that statement that suggests a willingness to sponsor a conference.

Mr. TURNLEY. We believe actually that President Carter is probably very much under the influence of various Irish-American leaders who have been very much influenced by the deputy leader of the SDLP who spent a long time in the United States and influenced these people.

Mr. EILBERG. What was his name?

Mr. TURNLEY. John Hume. I am surprised you haven't heard it mentioned before.

Mr. EILBERG. We know John Hume, I didn't know his title.

Mr. TURNLEY. Yes, yes, yes. This is so. John Hume would not be prepared to go along with that. He is an established politician here and there is no established politician in the six counties that would agree to this idea of having a conference in Washington because all the established politicians want the status quo to remain to safeguard their position.

We are new—I have been employed quite a long time, I have never become established, but we believe in looking at this in the fresh light.

Mr. EILBERG. John, you were a delegate, right, to the convention?

Mr. TURNLEY. Yes, I was.

Mr. EILBERG. Why did that fail?

Mr. TURNLEY. It failed because of the fact that the Protestant Loyalists, for want of a better word, Paisley, West, et cetera, knew that they had this British guarantee behind them. They had no reason to come along to compromise with the other people and undertake a power sharing government and this type of thing that was in vogue at that time.

They knew that they had a guarantee from the British that they would remain British and they didn't have to compromise.

Mr. EILBERG. Why do you think Westminster didn't lean on them and tell them, "Look fellows, the crutch will be removed, you have got to compromise"?

Mr. TURNLEY. They didn't do that.

Mr. EILBERG. Why didn't they? It certainly is not in the English interest to continue the present situation.

Mr. TURNLEY. We don't really know about that. They worry about world opinion. There is this talk about a "blood bath" and so on, which we don't believe to be true. Also strategically Northern Ireland may be of some importance. There are elements in England that want to remain here. No doubt, the military element, which is very strong in England, would like to continue here. There would be also other elements that would like to pull out, but the Loyalists have got this guarantee from them, and until the guarantee is withdrawn, you will get no compromise here, you will get no solution to the Irish problem.

Mr. FAHY. I think that is right. One can look at it in this light. We have had a situation where the majority population, the Protestant population on the one hand, and a minority population, the Catholic population, on the other hand, with the British prop behind the Protestant majority who could at any stage say and in fact did, to the Gaelic minority. "Look, if you don't want to work with us under our terms, to hell with you. We can exist without you."

What we are saying is remove the British prop from that majority and then they will have to sit down as equals to talk to the other people to try to work out a lasting peace.

Mr. EILBERG. What is the basic philosophy of your party? How do you envisage the solution to this?

Mr. FAHY. We see, first of all, as I said at the outset, a British withdrawal as an essential precondition to peace in Ireland. That having happened, we have no desire to become engaged or embroiled in sectarian conflict. We despise sectarianism as much as any other reasonable person does.

What we see at that stage is that Protestant and Catholic, people of different traditions in Ireland, can then sit down for the first time in Irish history as equals to discuss the problems which affect each and every one of us in our daily lives, to discuss those problems on a realistic basis without a gun at one or another's head.

Only in that situation can we hope to solve the serious economic problems which beset our country and our people at this time.

Mr. EILBERG. This is after the withdrawal or just after intention of withdrawal?

Mr. FAHY. Even after the intention to withdraw has been made by Britain, we believe that will be the first occasion in Irish history where we can realistically sit down with everybody present to discuss the problems.

Let's be honest about the thing. A lot of very pressing social problems have been overlooked simply because it suited one or another person to remain within his own tribal camp. Therefore, you have the unemployed people voting for the Unionist. Not because they have anything in common with the Unionist, but because a tribalism dictates that that is their camp. That is something we want to see done away with.

Mr. EILBERG. I just have one more question for John. John, we have talked about the failure of the last constitutional convention. Can you tell me why you think your plan would succeed if the British would withdraw?

Mr. TURNLEY. A declaration by the British that they were actually going to withdraw should be followed, in the opinion of our party, by a conference to which all parties to the conflict should be invited and we feel that we would get a totally different result to that of the late Northern Ireland convention because we would be negotiating in the knowledge, the certain knowledge that the British were withdrawing, which would make a big difference.

Mr. EILBERG. Thank you very much. That is awfully important because we had never talked to anybody as to why that had failed. Gentlemen, thank you.

[End of interview.]

CHAPTER XI: VISIT TO ARMAGH JAIL

On the evening of August 30, 1978, part of the delegation had dinner at the Glennowen Restaurant in Andersontown, in the Republican section of Belfast. It was at this restaurant that a meeting was held with Brendan Kerr, the father of Pearse Kerr, a Philadelphia young man who had been arrested in Belfast in 1977 on IRA charges and later released after Congressional intervention; Mr. Albert Price, father of the Price sisters serving life sentences in Armagh Jail; and Sean Murphy, brother-in-law of the Price sisters.

Plans were made to have the delegation visit the Price sisters in Armagh Jail in the company of Sean Murphy. Access to the jail was to be arranged by Albert Price with the Governor (Warden) of the jail on the pretext that the members of the delegation were family friends from the United States.

In fact, the visit was arranged for the next day, August 31, 1978, with Sean Murphy meeting the delegation in Armagh.

Prior to the delegation's departure for Armagh, it was informed by Father Denis Faul by telephone that an inmate of Armagh Jail, Monica Craig, was in a precarious medical state suffering from anorexia nervosa. Father Faul had informed the delegation that perhaps it could make inquiries in to her health during the visit to the prison. Various attempts had been made to effect her release on a pardon on medical grounds. Each attempt, however, had been in vain.

In the interview with Bishop Daly, it will be noted that he had written Secretary of State Roy Mason on several occasions on behalf of Monica Craig. The authorities refused to consider any plea for her release.

Incidentally, it should be mentioned here that Dolours and Marian Price were serving out their sentences in Northern Ireland after they had been condemned to two life terms plus 20 years for having participated in the bombing of New Scotland Yard and Old Bailey Prison in London. The transfer to Armagh Jail took place after they had gone on a hunger strike in the British prisons to force their transfer to the Northern Ireland prison. They were in their sixth year of their sentence at the time of the visit. The Price sisters apparently were treated by the authorities as a special type of prisoner, perhaps because of the notoriety they had received while on the hunger strike, also because they were considered to be model prisoners.

Therefore, the visit by the delegation to the Price sisters was not difficult to arrange. The delegation made the following report after the visit to Armagh Jail:

MR. EILBERG. Thursday, August 31, 1978, Congressman Ham Fish and myself, Josh Eilberg, visited Armagh Prison, about 39 miles southwest of Belfast.

In this prison there are about 90 female prisoners. Thirteen of those have special status as well as the two girls that we visited, Dolours Price, age 27, and Marian Price, age 25, the daughters of Albert Price.

We entered with Sean Murphy, who is a brother-in-law of the girls. We did not represent our official title, but entered as friends of the family.

Dolours Price told us that she is the second oldest girl in the prison and the bulk of the girls are in their teens.

They had no substantial complaints about conditions in the prison. They did say that the very young girls were easily intimidated into making confessions and were commonly brutalized at Castlereagh.

The girls who entered after March 1, 1976 who protest or choose not to comply with the regulations, such as in Long Kesh, do not go on the blanket, but rather on the protest. As a result of that, their privileges are denied so that officially they cannot receive packages nor have visitors. Remission is not granted or counted.

However, some girls, such as the Price sisters, commonly pass food that they receive in packages on to the girls on the protest and the prison authorities seem to overlook this practice.

The Price girls have unlimited visiting privileges. They were both convicted for setting explosions at Old Bailey in London and New Scotland Yard. They were charged with bombing and conspiracy. Both got two life sentences for the explosions and a 20 year sentence for the conspiracy charge.

The girls indicated that they have no idea when they might be released. We asked Governor Scott, the Warden, however, and he said it was customary after nine or ten years total confinement to release them. He could not guarantee when that would occur for these girls, but it would appear that was generally the idea. He sort of indicated that that would be the expected time of their discharge.

He said the Price girls were among the more intelligent girls in the prison in that they wanted to learn and were using their time and energy in a useful way.

The girls on the protest, according to the Price girls, do not get adequate food. They get small quantities, but are allowed unlimited amounts of bread.

The female guards vary in temperament. Some of them are rough in their treatment of the prisoners. The inmates generally have radios in their cells, but those on the protest have their radios removed. They are also locked up for 23 hours per day and are allowed out of the cell only for one hour. If they want to take a shower, then come back, and perhaps then take a walk, that is forbidden. They can only go out once. As a result of which, girls on the protest may shower only once in every two days rather than every day.

We asked about Monica Craig. The Price girls said that she had a condition called anorexia nervosa. This girl, Monica Craig, has been in custody for nearly two years of a seven year sentence. The condition seems to be one associated with imprisonment. She is psychologically unable to eat as a matter of guilt or protest over which she has no control.

According to the Price girls, she is getting adequate medical treatment. The Warden, Governor Scott, said that in fact Monica Craig was not dying as we suggested that she might be. He said if that condition were present that she would be shipped off to a hospital.

He said that the girl was being treated by an outside doctor known as Dr. Cole who visits her every day.

The girls told us that the prison-elected leader is Mairead Farrell. If a girl violates a rule and the prison leader feels that the girl's conduct is improper under the circumstances or under any circumstances, she may order the girl to stop. The wrong doing is judged by the group as represented by the leader.

I say this in reference to another girl, Rosemary Callaghan, who was allegedly beaten on the orders of Governor Scott last Tuesday.

The Price girls told us that six female guards beat her, she struggled, her clothing was torn, and she received bruises as a result.

It is interesting that when Governor Scott heard of our presence in the prison and invited us up to his room, he volunteered the story of Rosemary Callaghan and what happened last Tuesday. He said that the girl was playing her radio very loudly and others were doing the same. The Governor noticed this and instructed the guards to return the girl to her cell. He said that she was simply thrown or pushed into her cell. He did not indicate that there was any beating. We did not press the issue with him.

The jail seems to be adequately heated. Those who are on the protest or on remand have very plain white painted cells. There are inadequate recreation facilities for all the prisoners. About all they can do is walk around the prison yard.

Mr. FISH. As far as the Price sisters are concerned, they served three years in an English prison—and as a result of their hunger strike, they were transferred to an Irish prison where they have served now for approximately three years for a total of six.

In terms of the protest, it should be described as to what that means in terms of loss of privilege and hours of confinement. The protest should be understood as a continuing thing. It is not renewed. It occurs for anybody who has been admitted after March, 1976 who is protesting the lack of special privileges and special category.

But there is an interesting formality where the Governor himself once a week speaks individually to the protestor and announces the continuation of the loss of privilege, the punishment that accompanies the act of protest.

You mentioned the system of discipline within the inmate population, how they elect a leader. We inquired as to the control the Governor himself has over the female officer corps that is responsible for the prison population.

He said that there were prison rules applicable, that if an officer struck another officer or an inmate, that officer was reprimanded. Circumstances were taken into account such as provocation. If the act occurred another time, however, this would be grounds for suspension at half-pay or perhaps with no pay pending a full investigation.

Apparently, no matter what your status is, everybody is entitled to Mass and that is not a privilege that can be revoked.

Mr. EILBERG. That is very right. In all prisons they must be allowed Mass. Does the priest come to them?

Mr. FISH. Occasionally the priest can come to them, but it depends on the discretion of the Governor or the priest in charge at the time.

Mr. EILBERG. We explained very carefully to Governor Scott that we wanted very much to visit the Price sisters. We felt that we would not have been given permission to do so in view of the notoriety given our presence in Belfast. He said that if we had come to him initially, that he would have allowed us the visit.

We were carefully searched. Some of our belongings, including money, was counted and checked in and checked out as we left. Some keys that I had and some pills that I carry were removed during the visit.

We were then led to a waiting room where the normal waiting time is relatively short, particularly for the Price girls who are generally prepared to come out immediately and are ready on a moment's notice usually to receive a visitor.

We were kept waiting in the waiting room for perhaps half an hour. Our concern was at that point that we had been recognized and that we would be denied the opportunity to visit.

It turns out that that was not the case, or at least no one interfered with our sitting with the girls in the private visitor's booth where they brought in tea and cakes—

Mr. FISH. Supplied by the girls and not by the prison authorities, of course.

Mr. EILBERG. By the girls, of course, yes.

Mr. FISH. Josh, you ought to point out that we did, of course, sign our names. We used our names when we entered the institution and we gave a driver's license or another form of identification so there was no denying who we were. I think it is pretty clear that we were recognized quite early on and a decision was made by the Governor not to interfere with our visit.

CHAPTER XII: THE MONICA CRAIG CASE

Prior to the delegation's departure for Dublin on September 1, 1978, a press conference was held at the Europa Hotel in Belfast.

A full report of the press conference is contained elsewhere in a chapter of this report. However, the portion relating to the Monica Craig case is set forth here to relate the actions taken chronologically relative to this case.

In the course of the press conference, the delegation made specific mention that it hoped that the British authorities would exercise the royal prerogative of mercy in the case of Monica Craig. The delegation expressed its concern over the continued failing health of the prisoner and strongly expressed the opinion that even with the medical care she was receiving in the prison hospital there could be no hope for recovery under the circumstances.

The royal prerogative of mercy is equivalent to the American pardon. It was understood by the delegation that there had never been a case of any person sentenced for participation in terrorist activities being granted this relief.

The delegation proceeded to Dublin immediately after the press conference.

While at lunch at the U.S. Ambassador's residence in Dublin, Mrs. Shannon, the Ambassador's wife, informed the delegation that the radio had just announced that a female prisoner at Armagh had just been released by the exercise of the royal prerogative of mercy by Secretary of State Roy Mason.

In a call to the Consul General in Belfast, the Ambassador confirmed that the released prisoner was, in fact, Monica Craig of Dungiven.

As was later reported in the newspapers, the delegation made the following statement upon receipt of the news:

"We are deliriously happy and congratulate the British authorities for being very sensible and doing the reasonable thing. We hope that she will recover and lead a useful life."

The delegation takes no credit for the release of Monica Craig. If it contributed in some measure to bringing the case to the attention of the public and the British authorities which may have led to her release, it had fulfilled its humanitarian obligations.

The delegation feels that the following newspaper reports of the release of Monica Craig may be of interest:

STARVING IRA GIRL IS FREED

MASON ACTS AFTER DOCTORS WARN OVER SICK SLIMMER

A jailed IRA girl was freed yesterday because she was starving to death. Monica Craig, 20, is suffering from the slimmer's disease anorexia nervosa. She was released by Secretary of State for Ulster Roy Mason on "humanitarian grounds" after warnings from doctors that she could die.

She was rushed to Armagh Hospital, where she is under constant medical supervision.

Monica of Chapel Road, Dungiven, Co. Derry, was convicted of possessing explosives and being a member of the IRA.

SENTENCE

She was sentenced to seven years last September and would not have been due for parole until 1981.

She started suffering from the disease shortly after she began her sentence at the top security women's prison in Armagh.

She began slimming—and couldn't stop.

A Northern Ireland Office spokesman said last night: "It wasn't a protest hunger strike.

"The prisoner never complained of the conditions at the prison or her treatment."

For months, the prisoners' action committee in her home town have pleaded with Mr. Mason to release Monica.

Since she started her sentence her weight has halved, dropping from ten stones to under five.

Her plight was brought to light last week when two American congressmen on a fact finding mission to Ulster mentioned her case at a Belfast Press conference.

Anorexia nervosa is a disease which often affects slimmers and is prevalent among adolescent girls.

Government sources said that Mr. Mason's decision was taken after he considered reports from prison doctors as well as Monica's own doctor.

Last night, however, SDLP leader Mr. Hugh Logue, who has campaigned for Monica's freedom, claimed that her condition was caused because she was in prison, and that it had nothing to do with slimming.

But a Loyalist paramilitary leader in Belfast said: "This is just a new ploy by the IRA, because the hunger-striking stunt has failed time and time again to get a prisoner's release."

WEIGHT LOSS PROVO GIRL IS FREED

A 20-year-old Provo explosives girl was released from Armagh jail today because she is suffering from anorexia nervosa, the slimmer's disease.

Monica Philomena Craig, who was convicted of explosives' offences and belonging to the Provisional IRA at her trial last September, was released after a decision by the Secretary of State, Mr. Mason, to recommend the exercise of the Royal Prerogative of Mercy.

A Northern Island Office spokesman said it was on "humanitarian grounds" that the decision was taken.

Miss Craig, of Chapel Road, Dungiven, was taken to Armagh Hospital where she was put under constant medical supervision.

RELEASE

News of her release was announced at lunchtime today but earlier two American Congressmen, on a four-day fact finding tour of the province, spoke of her illness at a Press conference.

Mr. Joshua Eilberg and Mr. Hamilton Fish, members of the House Judiciary Committee in Washington, claimed she had lost a lot of weight during her imprisonment, adding that she had originally weighed 140 lb. and this had dropped to only 70 lb.

Anorexia nervosa is a disease which is often taken by slimmers and is particularly prevalent among adolescent girls.

It is also a nervous illness and when caused by slimming the victim often tries to hide the fact from relatives that she is starving.

But Mr. Hugh Logue of the SDLP, who was among those campaigning for Miss Craig's freedom, claimed that her condition was brought on by the fact that she was in prison. He said she had not been slimming.

SICK GIRL FREED AFTER CAMPAIGN AND MERCY ORDER

A 20-year-old critically ill girl prisoner, serving a seven-year sentence in Armagh Jail, has been released by Secretary of State Mr. Roy Mason after less than a year.

Monica Craig of Chapel Road, Dungiven, Co. Derry, who failed from 10 to five stone during imprisonment was freed under the British Royal Prerogative of Mercy.

And last night Mr. Hugh Logue, of the SDLP, said credit for her release must go not only to the Relatives Action Committees but to Fr. Raymond Murphy, Dr. Tomas O'Fiaich, Primate of all Ireland, and himself. All of them had campaigned for Miss Craig's release.

'SHE WOULD HAVE DIED'

"The girl is so seriously ill that I believe she would have died if she had stayed in the prison hospital.

Reports had said Miss Craig was suffering from anorexia nervosa—"slimmer's disease." But Mr. Logue denying this, said she had not been slimming and he claimed that her condition was brought on by prison conditions.

Miss Craig was sentenced last September on explosives charges and for membership of the Provisional IRA.

A Northern Ireland Government spokesman said the move to release her had been recommended by Mr. Mason on "humanitarian grounds." She has been seriously ill in the prison hospital for several months and Mr. Mason had been receiving regular reports from doctors who had examined her in the jail hospital.

SICK GIRL PRISONER SET FREE

A 20-year-old Co. Derry girl serving a seven-year sentence in Armagh jail for possession of explosives and membership of the IRA, has been released on health grounds, by the Secretary of State.

She is Monica Craig, of Chapel Road, Dungiven, and she was sentenced at Belfast City Commission in September last year.

She denied the offences.

The Northern Ireland Office said yesterday that Mr. Roy Mason had recommended the Royal prerogative of mercy on humanitarian grounds.

She was not due for freedom until July 1981 at the earliest, under normal procedure.

Craig has been ill for some time—she is thought to suffer from anorexia nervosa and has been losing weight.

It is believed that the Secretary of State has been receiving medical reports on the girl and he took the action to free her after the last report from the prison doctor.

SLIMMING DISEASE GIRL FREED BY MASON

The Dungiven, Co. Derry girl, released from Armagh Prison yesterday, was suffering from anorexia nervosa and weighed around six stones, it was learned yesterday.

The Secretary of State, Mr. Mason, ordered the release of Miss Monica Craig, of Chapel Road, Dungiven, who had been serving a seven-year sentence for possessing explosives and bomb-making materials, and the Royal prerogative of mercy was also exercised. Earlier in the day, two visiting American Congressmen had called for the girl's release at a press conference to conclude a visit during which they met many figures interested in the welfare of prisoners.

Miss Craig was sentenced at Belfast City Commission last September and would not have been due for release, with full remission, until January, 1981. She had been suffering from her illness for some time and was being treated in the hospital at Armagh Prison.

The former SDLP Convention member for the area, Mr. Hugh Logue, the Archbishop of Armagh, Dr. Thomas O. Fiaich, the Bishop of Derry, Dr. Edward Daly, the Rev. Raymond Murray of Armagh and the Tyrone Relatives Action Committee had been working for her release. Miss Craig was transferred to Armagh Hospital yesterday.

"I believe the girl would have died if she had remained in prison," Mr. Logue said yesterday.

Miss Craig apparently developed the illness while in prison and her release was recently recommended, following visits by consultants of metabolic and psychiatric disorders, who diagnosed that prison environment was exacerbating the illness. Though a healthy girl, Miss Craig's weight had dropped to six stones in prison.

CHAPTER XIII: MEETING WITH REPRESENTATIVES OF THE ASSOCIATION OF LEGAL JUSTICE

On August 31, 1978, Congressman Eilberg met with representatives of the Association of Legal Justice with regard to human rights issues in Northern Ireland.

This delegation was not directly involved with the preparation of cases to be submitted to the European Commission of Human Rights as were the representatives with whom Congressman Fish met. (See Chapter VII, E.)

Excerpts of the transcription of a recording made of this meeting follows:

Mr. EILBERG. What is your name, Mr. McCann.

Mr. McCANN. My name is Sean McCann.

Mr. EILBERG. And you are the——

Mr. McCANN. Chairman of the Association for Legal Justice.

Mr. EILBERG. And your friends?

Mr. McCANN. This is Mrs. Murray, secretary, and Miss Francis Murray, the treasurer, and Mr. Paddy Kelly, executive member.

Mr. EILBERG. Mr. McCann, you have just given me a paper entitled "Brief Synopsis of the Association." Would you mind telling me about it in your own words in a brief manner.

Mr. McCANN. We had a few points and we thought maybe the best thing would be to give a quick resume of some general points which I make as Chairman, and following that then perhaps you would like to ask questions, and the rest of the members of the delegation would be glad to answer them as well.

This is a brief resume of points and issues which we would like to put before you, Congressman, and also before Congressman Fish. We would like, first of all to thank you for seeing us. We would like to tell you that we welcome your interest, and we would like to give you a brief account of the Association for Legal Justice.

We are a human rights association that has been working, fighting for human rights in the North for the last eight years. We began in July of 1970 because we were concerned by the discrimination and arrests and sentencing procedures and the law, and we were in the process of building up our organization when internment came and following internment we became immediately involved in the human rights issues to a very strong extent.

As an association and in our fight for human rights on behalf of the Irish people in the North, particularly, and behalf of the Irish minority community, we have been in contact with many people and many associations and even governments.

For example, we have been in contact with the Irish government and helped to document the case which they brought to Strasbourg, which case was successful, finding Britain guilty of inhuman and degrading treatment of Irishmen in the North.

Mr. EILBERG. Is this a Catholic organization or are there members also from the Protestant side?

Mr. McCANN. Congressman, by our Constitution, we are nonsectarian as an organization, but given the polarization of the communities here, unfortunately most of our members are from the Northern Ireland Catholic community.

Mr. EILBERG. All right.

Mr. McCANN. In the early days we did have one or two Protestant members, and indeed we have, Congressman, one now. But by and large, given the polarization——

Mr. EILBERG. I understand.

Mr. McCANN. We are in contact with Amnesty International, the Gardiner Committee, the World Council of Churches, the Shackleton Committee, and indeed anyone or any group or association which can help in the battle for human rights in the North.

Mr. EILBERG. I have had a telephone call from Mr. Korff or Amnesty International. Do you know Mr. Korff?

Mr. McCANN. I know Mr. Korff very well. He rang me this morning and I was telling him we were seeing you tonight.

Mr. EILBERG. All right. Please proceed and forgive my interruption.

Mr. McCANN. I just want to make one point, Congressman, which might be a little bit jarring, that while we received very good responses from people and associations whom we have written to on the question of human rights in the North, we were disappointed when we sent a detailed dossier and long letters to various members of Congress in America last August. I am sorry to say we have received no response from those gentlemen. We were very disappointed in that.

The evidence which we gave at that time is the kind of evidence which was presented to Amnesty International by our Association in, following November, which resulted in the Amnesty Report establishing brutality and ill treatment in interrogation centers. We are a little bit disappointed by that, and it is only fair, I am afraid, to say it.

The evidence which the Association For Legal Justice has amassed and documented over the last eight years is of such a character as to indicate clearly that the Northern Ireland's Catholic minority community has suffered most grievously from the policies and moral practices pursued by various British governments of whatever political complexion. That is what we are saying.

Since General Freeman, for example, his Army successors commented in 1971, and I quote, "It will be necessary to lean on the minority community," this policy has been in operation as witness the following points which we would like to make briefly, Congressman:

First, the nature of internment of Northern Ireland Catholics; two, the torture cases which went to Strasbourg; three, continuous British Army harassment of minority areas, which even to this day has not ceased; the continued incidence of torture and brutality of arrested persons at police detention centers, such as Castlereagh, which has now been established by the Amnesty Report of 1977; the operation of repressive legislation such as the Emergency Provisions Act; the special Diplock nonjury courts, circumstantial evidence and very heavy sentencing patterns, repeated and long remands of literally several hundred persons in custody equalling in our view, a form of internment; the atrocious prison conditions which exist in clear violation of the United Nations Standard Minimum Rules, as for example in H Block, which you commented on in television last evening; and furthermore, clearly discriminatory policies in housing, where in one area in response to loyalists' protestations the number of houses was cut from 4,000 to 2,000 in an area where housing is of vital importance to the Catholic community; discriminatory patterns in employment with regarding to the decisions of placing of industry over the last number of years, and lastly direct rule. We are in the process at this moment of preparing a dossier and establishing all these practices.

Discriminatory patterns in the freedom of political expression, where certain laws clearly discriminate against free and open expression of political dissent. For example, if one were to put an Irish flag up in one's garden, one would be harassed immediately; The capitulation to loyalists, for example, as in the case of the Ulster Worker's Council. We feel that these are clear patterns of discriminatory policy by the British government which militates strongly against the Northern Irish Community. That is the first section.

Mr. EILBERG. All right, at the end of the first section, may I make a very brief statement and ask you a couple of questions? We have had the opportunity during our brief stay to visit Crumlin Road Prison, and that is not to say that we had anything that would resemble an inspection of the facilities there, but we were there and met the Governor and saw some of the prisoners, and also today we visited the Armagh Prison and spoke to a couple of prisoners there.

I would like to direct your attention to the very sad case of Monica Craig who was convicted of, I believe, possession of explosives in an automobile and given a seven year sentence of which she has served about a year and a half. As I understand it, when she entered the prison a year and a half ago, perhaps more

than a year and a half ago, at Armagh, she weighed in our terms about 140 pounds. She is now down to about 75 or 80 pounds, and she is under the care of a doctor who attends the hospital every day, and she is receiving medical treatment.

She is suffering from anorexia nervosa which is common in some young girls, but results in this case from her inability to adjust to prison life, and she just can't eat psychologically, it is part of the metabolic system. I am not a doctor and I don't quite understand, but the point that I am making is that my impression is that no amount of medical care will alter her condition, that is at least the ordinary medical care, and I would like to see something done for her.

Under the law, under the law—

Mr. McCANN. What is her name?

Mr. EILBERG. Monica Craig.

Mrs. MURRAY. Where is she from.

Mr. EILBERG. She is from Dungiven.

She is now in Armagh, and her doctor is coming in every day. I have confirmed that. But she needs something a lot more than that. Perhaps psychological or psychiatric care. What she really needs most is release. But my question to you is, and I don't know if you are prepared to answer this question at the moment. I hope you are. What possible forms of relief are there under the law of Northern Ireland? I would hope that she would be pardoned, that she would be released immediately. But I am not familiar with your law, and what are the options? One at a time.

Mr. McCANN. The fact that she is doing very badly and losing weight and psychologically ill, in my view, will not mean that she will be released, Congressman. What one might be able to do there would be to approach, number one, the chaplain, approach, number two, her own doctor and see if he could get in to examine her and make representations.

On the other hand, our Association could, in view of what you say, make further inquiries into her condition, get in touch with her relatives, express concern for her, and see if we can't get some kind of movement on it. But actually, like my colleague, I wouldn't be optimistic that we would be able to achieve very much. We will do the best we can, though.

Mr. EILBERG. Let me tell you that this afternoon we met with Father Faul and Bishop Daly, both gentlemen who have been very interested in human rights, as you know far better than I, both of whom are very familiar with this case. Bishop Daly has attempted to secure her immediate release, and he has been denied.

Once again, I don't think that the intercession of her religious leader or anyone else including the family will do the trick. What I want to know is what does the law provide in terms of what options are available?

Mr. McCANN. If she is sentenced, as far as I understand it, she would then come under the auspices of what they would term prison rules, and they would argue that under prison rules there would be sufficient medical attention available to her there. Isn't that right, Francis? And that is what they will always say. "We have our own doctor. We will look into this case. As far as we can see, she is not too bad." So really, it is going to be difficult to break that one because they—

Mr. EILBERG. I don't care how difficult it may be. I am telling you that this case calls for immediate attention, in my opinion.

Mr. McCANN. We will get to work on it.

Mr. EILBERG. I realize the difficulties that you are describing, but this girl cannot wait, in my opinion, for the ordinary course of events, and some extraordinary action has to be taken, but I don't know what the legalities are, and whatever may be done has to be done within what is the law of Northern Ireland, I suppose.

Mrs. MURRAY. We have dozens of similar cases just exactly like that one, one was an elderly man who recently died in Long Kesh. Each time we come up against this problem we fight the authorities and we come up with the same answer. They just will not give in. They won't pardon the person.

As a last resort, there is a Queen's prerogative of mercy, which in many instances has been applied for and has been refused also.

Mr. EILBERG. In this case, the Queen's prerogative of mercy has been denied, we were told by Bishop Daly.

Mrs. MURRAY. As far as the government here is concerned, she is in there and she is going to stay in there—she will probably die in there.

Mr. EILBERG. This member of Congress is not satisfied with that, that every possible action has been taken, so we would like you to explore it further.

Mr. McCANN. We will explore it further, and we will keep you informed on it, Congressman. I will make a note of it now, and we will be exploring it now, I can assure you.

Mr. EILBERG. All right. Can you please proceed with your presentation.

Mr. McCANN. Well, that was the first section, and as I say, Congressman, I just wanted to make a few points and then perhaps if you would ask questions we would be glad to answer.

So, our view, as I say, just to recap briefly, we feel that the evidence which we have amassed shows that from the point of view of the British government there is a very strong bias against the Irish Catholic minority community in the human rights field and indeed in all sections of the human rights field. We are very concerned about this indeed. We would like something to be done about it, if it were possible, from your side, we would appreciate it.

To make some general points, if we may, we are a human rights association concerned with battling for human rights for all Irishmen, whether they are Catholic or Protestants, or whatever. The polarization of the community and the biases we see against the minority community means that most of the cases we have been fighting for have been Northern Irish Catholics.

But to make a couple of general points, although we are a human rights association, we also have general observations in the whole field of the problem, and we would like to make a few, vis-a-vis the Northern majority, that is, the majority in Northern Ireland. We feel it important to make the point that this is an artificial majority. It has only been in existence for the last 50 years.

The Northern minority community we feel and wish to point out is part of the Island of Ireland's majority, in outlook, in culture, and in political aspirations. This is another important point to realize when it comes to an overall solution.

Another point, people in the South of Ireland have again recently expressed themselves in favor of Irish unity, and we feel that the best ground for an overall solution in terms of human rights and political stability must be really in an overall Ireland, Irish position. Also we know that there has been strong opposition in the South in regard to the removal of Articles III and IV from the Constitution, and our talks with certain members in the Civil Services were of this side.

We have been informed, confidentially that there has been a strong movement against the removal of Articles III and IV. So the point I am trying to make is that in regard to a solution, in our view, it will have to be in the context of the Island of Ireland itself and those points I have made must be taken into consideration.

That is the next section, and just to finish this off, we would make the point that we firmly believe that a British declaration to withdraw is very important for the solution to the problems of justice and equity in our country. We feel that if they make their intention to withdraw known, it will concentrate the minds of Irishmen on the Island of Ireland to find a just solution.

We feel that a guarantee of human rights must be made throughout the country, as for example, we would propose that the European Convention of Human Rights be incorporated into the domestic law of the country. We feel that there should be a guarantee of continued financial subventions, say, to a given debt, pending a political settlement between all the parties.—

Mr. EILBERG. By whom?

Mr. McCANN. Well, first of all by the British, because after all they have been here for 800 years and the least they can do is to continue to subvert the country in the process of the withdrawal, and possibly the United States and other friendly countries might see their way clear to making those subventions for awhile. One, the European Convention would guarantee human rights throughout the country, two, those subventions would mean that normal communal life could continue until such time as a political solution would be arrived at by the people of Ireland. Then we will have an Ireland where human rights prevail and an Ireland where political stability prevails. We feel that the Ireland of tomorrow, the Ireland that is going to have peace and justice must be a unitary one.

Not to repeat, we wish an Ireland in which the political rights of everyone will be respected and in which the human rights position will be thoroughly guaranteed. Those are the points we want to make, Congressman. I have talked enough. You might like to ask questions now.

There is one particular point, by the way, we would like to stress right away, that is the question of the courts and the question of the number of people who

are in H block and various other places like that, on the basis of signed statements they made.

Now, the Amnesty Report has established that there has been ill treatment and brutality during interrogation. Yet, in 80 percent of the cases which have been brought before the Diplock courts, convictions have been made on the basis of statements which the accused person made.

Mr. EILBERG. Mr. McCann, in order to save time, I just want you to know that I and Congressman Fish, have read and reread the Amnesty International Report. We received it shortly after its publication in June in Washington. I believe it to be a very valid document and am shocked by its findings and am impressed with the authenticity of the sponsorships, so that we don't need to spend time on the report.

Mr. McCANN. It is just one thing I am particularly concerned about. I see your point, Congressman.

Mr. EILBERG. You mentioned the possibility of financial help from the United States after the British government would make a declaration of its intention to leave Northern Ireland. What, if anything, have you done in that direction?

Mr. McCANN. As I say, the points we are making are points of a general political character which we feel as Irish men and women we are entitled to make in the present situation. Our main concern is for the establishment of human rights for all Irishmen, Protestant and Catholic, on the island.

But we are concerned about solutions, and what we are simply saying is if human rights can be guaranteed throughout the country, if financial subventions from whatever friendly source can insure that normal life can continue, if the British side declares that they intend to withdraw, then we feel that that will concentrate people's minds, Catholic and Protestant, North and South, on to working out a political solution that will work.

Mr. EILBERG. Mr. McCann, what role do you envision in support or guarantee on the part of the United States or the European community, and I note with interest that you mention the European community, how do you think the United States or France or Italy or any of the members of the European Economic Community might help in arriving at solutions other than financial?

Mr. McCANN. Well, that is a very big question, I must pass on to my own colleagues here, but what I am simply saying is that, number one, human rights have got to be secured either by a European convention or some international convention.

With regard to America, we have been rather disappointed at the lack of anything positive coming from America with regard to support for the human rights position here. We have been rather disappointed at the lack of condemnation coming from America for the terrible things that have been happening here, the torture, the brutality, and so forth.

Now, we know there are many good people working in America on these issues. We know that. We accept that. But we are rather disappointed that nothing tangible has come to condemn Britain for what she has been doing here, and demanding that these things stop.

If France wants to speak on these issues or any other country, we would be delighted. We would also be delighted if America would also talk on these issues, very directly.

Mrs. MURRAY. Indeed, it might help to break through the blanket of silence that the British media have imposed on the whole situation here. America could be very useful in attempting to break that wall of silence because Britain is still trying to get through the message that she is an impartial peace keeper here, and that it is not true. It is just simply not true, because the only people who are going through the courts here, the majority, the vast majority of the prison population here, is Catholic. The military are only in Catholic areas. Boys and girls cannot walk up and down streets that they are not stopped four and five and six times and asked where they are going, even though they may have already been stopped by an earlier patrol.

If you go around to Castle Street at the moment, you will see boys standing in pens. I mean, literally, a kind of cattle pen in Castle Street while they are waiting to be checked out. They stand there sometimes for one and two hours. Those are young boys. You only see that in Catholic minority areas. You don't see it in loyalist areas at all because the police look after that section of the community.

The military is only in this section of the community, and therefore, Britain is not being an impartial force.

Mr. EILBERG. Would you like to say anything?

Mrs. MURRAY. All I would like to say is the continuing arrests are going on daily. There are homes raided every morning at 5:00 a.m. They take young boys and girls, fathers and mothers from their homes. They take them to different courts and then pass them on to the RUC. Some of these people are held for 72 hours. Others are held for seven days incommunicado without their lawyers being allowed to be present, without anyone allowed to be there, and I think this will have to be stopped right away.

Mr. KELLY. I would say, even tonight, if you were to go now, you would find out that almost 100 percent of the Catholic streets are in total darkness. The army tore away the lights. These lights haven't been on for eight years. The people are walking around in darkness every night. Go to any loyalist area you will find out that all the streets are lit. There is nobody being harassed. If you come home late at night, the army is there all the time. I experience this day in, day out, night in, night out, 24 hours a day, going to work, to a meeting etc.

I myself had a son who had to leave his job because he was being stopped while walking every day to work. He got this 24 hours a day seven days a week. They are even stopping the people coming out of their church. You go to the dole if you are unemployed. If you go to the dole, the army is waiting to arrest you, and if you are arrested and you are on the dole and you are kept for 72 hours under section 10 of the Emergency Provisions Act, you lose your three days dole because you were unavailable for work, and this is happening day in and day out, year in, year out.

Mr. McCANN. Another thing, Congressman, if I may say: We have brought along for you certain statements that have been made to us by people concerning violations of their human rights. I would like to stress one thing; they are just a selection of statements. Over the last eight years we have documented literally thousands of cases of harassment, of brutality, of ill treatment of one kind or another, of people being shot, of children being hurt, killed by rubber bullets, a woman like Mrs. Groves was blinded by rubber bullets, and we have documented this through the years. There is a vast mass of evidence there.

We have given some of it to Strasbourg. We gave some of it to Amnesty. We sent some to Congressmen and Senators. I am sorry to say we didn't get a response back from them. We were very disappointed and distressed about that. I mean, when is something going to happen on these issues from America.

Mr. EILBERG. Mr. McCann, I cannot speak for any of my colleagues in the Senate or in the House. I am here as the Chairman of the Subcommittee on Immigration, and there have had been many occasions when Irish citizens have been unable to receive visas to visit or immigrate to the United States, and that is what brings us here.

Mr. McCANN. I appreciate your concern very much, Congressman.

Mr. EILBERG. This is what brings us here in the first instance, and when we look into that subject, we naturally find out reasons for denial which have to do with criminal records which bring up all the conditions and the concerns that you have been talking about.

Mrs. MURRAY. Can I mention one other thing, Mr. Congressman, and that is the question of the remand of prisoners. There are 641 young prisoners at the moment in remand here in prisons in the North. Of those, the average period of remand is ten months. Some of the boys, if you take the extreme case, one in particular we know of a lad called McCallister who is presently 22 months on remand.

Now, there is another particular aspect of the situation, those lads are in jail—without trial. You know, whenever their case even comes up for trial, they have spent 23 months already in a jail, and sometimes they are acquitted.

Mr. EILBERG. Gentlemen and ladies, we have gotten the essence of what your views are, and I hope you will agree the hour is late and we have heard you. Our conversation is now a part of the record of our committee, and we will do everything that we can.

I cannot offer any personal guarantees as to what the Administration will do or what the Senate or the Congress will do, the House will do, but I am here, and I have been very busy for the last several days listening to all points of view. I can just tell you that somebody is listening, that one committee of the Congress, at least, is presently working on the problem.

Mr. McCANN. We thank you very much, Congressman. We appreciate your coming, and believe me, we do appreciate the interest, we hope you can generate a lot of interest over there, because at times we get a little disillusioned.

Mr. EILBERG. Gentlemen and ladies, thank you very much.

CHAPTER XIV.—MEETINGS WITH FATHER DENIS FAUL AND FATHER RAYMOND MURRAY

Father Denis Faul of Dungannon and Father Raymond Murray of Armagh are two Catholic priests who have been speaking out and writing for a number of years about violations of human rights committed by the British government in Northern Ireland. They are prolific writers, researchers, and speakers on this subject. They have succeeded in carrying their messages to thousands of people in all parts of the world.

Among the publications they have authored are "SAS Terrorism—The Assassin's Glove"; "The Birmingham Framework"; "The Hooded Men—British Torture in Ireland—August, October 1971"; "The Castlereagh File—Allegations of RUC Brutality, 1976–1977"; and "The Shame of Merlyn Rees". At the time of the delegation's visit to Northern Ireland, Father Raymond Murray who is also Chaplain of the Armagh Jail, was out of the country.

The delegation, however, did meet with Father Denis Faul in Dungannon on August 31, 1978.

The delegation subsequently had the opportunity to meet with Father Murray in Washington on October 3, 1978.

Excerpts of the transcriptions of recordings made on these two occasions follow:

A.—MEETING WITH FATHER DENIS FAUL IN DUNGANNON

Mr. CLINE. This is August 31, 1978 in Dungannon. An interview with Father Denis Faul.

Mr. EILBERG. Father, in your opinion, what caused the change of British policy in March of '76 to eliminate special privileges for political prisoners?

Father FAUL. The Gardiner Report, you see—Lord Gardiner recommended that special privilege status should be done away with, and they were recommending his report, fulfilling his report.

Mr. EILBERG. Can you tell us about that?

Father FAUL. We gave evidence to the Government Commission. We gave evidence to Lord Gardiner, but he didn't pay any heed to my evidence.

Mr. EILBERG. What reasons were given in the report for this change of status?

Father FAUL. The reason was given was that they couldn't have normal prison life with prisoners living in compounds and running their own affairs. They gave the reason that it was contributing to the paramilitary system. The prison compounds were used as universities of terrorism and places of instructing young chaps in further terrorist methods.

Mr. EILBERG. And what was your position in that matter? What is your position in that matter?

Father FAUL. Well, my position in the matter comes somewhere in between. I think there is certainly a case for giving the prisoners a special status. In fact, there is a very good case for improving the lot of all the prisoners in Northern Ireland whether they are civil or political. I am not very keen on prisons anyway and I certainly am not an admirer of the British prison systems in any of its shapes or forms, the prison system anywhere.

But I think there is some validity in this argument that youngsters can go into jail and come under the influence of paramilitary leaders filling them with wrong ideas. There is validity in that point.

So I am somewhat in between. I think they can be given status, but if they got status within the H Block system, it could be controlled, you know, much better than within the compound system. The H Block system is a cell system. I think they could be given status and at the same time a degree of control by some sort of leaders so the military influence need not be all that critical.

Mr. EILBERG. How could the situation be controlled or how could it be better controlled in the H block system?

Father FAUL. Well, because you can lock them up in their cell. You see, in compound you can't lock them up. They are in huts, you see, 20 or 30 of them, and they discuss terrorism all night in the hut; whereas if you get them into a cellular system, well you can put them into the cell at 6:00 o'clock or 7:00 o'clock, whatever time, and they don't get out till 7:00 o'clock the next day. There is a much better degree of control.

Mr. EILBERG. I see.

Father FAUL. I think there is some validity in that point of Lord Gardiner's report. You know, nobody wants youngsters, put in, as I say, just swept in by the police. The general business of having them clearing the teenagers from certain Catholic areas is completely wrong to me.

This is a form of terrorism. Of course, you know my views on terrorism. I consider the government and the RUC and the British Army to be one form of terrorism, Provisional IRA to be another, Loyalists to be a third. Anyone that inflicts terror on innocent people is a terrorist. The governments are as much terrorist as anyone else, but the government claims the right in the interest of the common good. The government claimed in the interest of the common good that it has the right to do wrong. I mean this torture is a form of terrorism. Where people can come in and then wreck people's houses, like the British Army does.

As far as I am concerned, there are six or seven terrorist groups here, you know, different forms of IRA, different form of paramilitary.

Mr. EILBERG. You oppose them all?

Father FAUL. I oppose them all, of course. The Church opposes them all. Some of us might think the Church is a form of terrorism, but I don't agree with that. [Laughter.]

At any rate, I oppose them all, every damn one of them. They are all equally rotten, the whole lot of them, in my opinion.

Mr. EILBERG. Father, how do you view the special status which is given those prisoners before March, '76 and the change thereafter?

Father FAUL. Well, I say I have reservations about it. I have reservations about it in the sense that I think some men have gone in there comparatively—completely innocent or as comparatively innocent youngsters, and have been hardened to become sort of very dedicated men.

Another thing that annoys me a little bit, but as a churchman, as a priest, we go into Mass with these boys. Half of them don't go to Mass in these status compounds.

Mr. EILBERG. They do not?

Father FAUL. No, and I am annoyed at that. An Irishman not to go to Mass is a very bad business, whereas in the cellular system when you go to Mass it is the only time you can get talking to each other. That is maybe not the best motive, but I am a wee bit annoyed at that, you know.

I am not saying that if they got out the women would soon put them back to Mass, but it is an indication that, you know, there is a certain corruptive influence there that is not my line of conduct, not one that I would approve of. But I have no wish to see them subjected to the full criminal system such as it is imagined by these people, especially in view of the way they have been put in there. As the Archbishop said himself, they harness you to court, and the whole way they have been found guilty. It is absolutely absurd.

Of course, the whole thing will end in an amnesty anyway. I am sure that is a naughty word. You haven't been able to use that word around here. I mean, actually the H block business at the moment is an absolutely impossible political problem for the British government.

For a man that is doing a 22-year sentence, which is common enough in there, you know, if he is on protest, he loses remission, that means he is going to sit there for the next 22 years on protest, and make no mistake, the man will do it, I can tell you that. That means Mason can make no settlement here for 22 years. With that, they have got one foot in the grave, and the British can make no

settlement here, while there are thousands of men on protest and the relatives going mad outside.

So if you like, the blanket, the blanket protesters is a very, very tough political weapon. As long as it is going on, there will be no settlement in the ghettos, and when there is no settlement in the ghettos, there will be no settlement in Northern Ireland. So even from the political point of view, it would be worthwhile to get the thing settled. For the sake of peace, you need to get that problem settled.

And I don't think anybody here would have that, I mean among the poorer people. Of course, the rich Catholics and the rich Protestants don't care. They could all rot in jail as far as they are concerned. It is a class thing very much, in that sense.

But the poorer people do care—and as long as these youngsters of 17, 18, 19 are in jail, having been convicted in these very, very dubious ways, and as long as they are on protest, the relatives are never going to accept any kind of settlement.

Mr. FISH. Would the Archbishop's position be that the protest must be ended by allowing of privilege to these political prisoners? Is that the first step? Is that what you are saying?

Father FAUL. Well, he would really like them to get some form of status, you know, some form of status that would ameliorate their position, you know. There is plenty of room for compromise, and politicians are geniuses as compromisers. You know, you can call things by different names. You know, you can call it emergency status, you can call it special status, call it what you like within the frame of the prison rules an immense amount could be done, you know, to give them some kind of a status that would satisfy them.

Mr. EILBERG. Father, is it not true that the troubles that presently exist here are related to the political situation?

Father FAUL. Oh, very much so. Yes.

Mr. EILBERG. And how are they related and how do you see—I mean, what approach would you follow as far as the political concern?

Father FAUL. Well, the political situation here is—it is very important to remember, the troubles here are about power, privilege, and money, not about religion. Religion has been used as an identity label. There is a certain degree of religious hatred in this community, particularly in the city of Belfast. I tell you, if I may say so, it is more on the side of some extreme Protestants. I don't think there are many Catholics that hate anybody because of religion. I don't think so.

However, that is not the main ingredient. The main ingredient is power, privilege, and jobs, money, and that is what it is all about, and as long as the British government backs up one section of the community with their army and with their money, that is going to be the position.

Mr. EILBERG. All right. What route do you think is the desirable route, politically?

Father FAUL. Well, I think the only real thing that will change it—at the present moment it has got so deadlocked, so utterly deadlocked—is, I think, that Britain should declare her intention of leaving at some future occasion, gradually and by degrees, in an orderly fashion, and she should declare that she has an interest in seeing Ireland united, and that it should be done in an orderly fashion, or having some kind of an independent status within a federal arrangement.

It is English presence here that is the main trouble, and you could not expect the unionists, the big wigs and—and by big wigs I am talking about the university professors, the judges, merchant princes, and the landowners. They are the people who are holding us. It is not the poor little Protestants on the Shankhill Road and the East Belfast. They are not the real villains of this picture.

Mr. EILBERG. What benefits or power do the British have? Is it worth the struggle they are going through?

Father FAUL. Oh, it is worth a lot to Britain in this case, don't you worry.

Mr. EILBERG. Would you explain how that is so?

Father PAUL. Yes. Well, first of all, the instinct of an imperial power is always to hold on, never to give way, you know. And when Britain can control one county of Ireland, she controls Ireland economically and politically.

Mr. FISH. Do you want me to tell you who we met with here? All the people were residents of Northern Ireland. There was a group led by Glenn Barr? Glenn Barr came in with half a dozen other friends, members of the Ulster Defence Association.

There was another group led by George Allport that came in to see us. Of course, we met Gallagher's father that first night, that was on Monday night. Then Tuesday, we met with Lowry, Concannon, Sinn Fein people with whom we spent about three hours.

Mr. Fitt couldn't see us. We saw Rev. William Arlow and Paddy Devlin. I saw two people: Francis Keenen and Patrick Finucane from the Association of Legal Justice. They have a case representing four people which they are preparing for the International Commission of Human Rights.

Father FAUL. They are very good, yes. Let me explain, in the year 1967, Derry Corporation built one house, and that was their one achievement, as far as I know, that one year. That is what has been often said anyway and never been denied.

And in the 1960s we couldn't get money for houses or factories west of the Boyne, or in a place like West Belfast. Where you must remember, there is only—until very recently there was only one factory namely the Ulster Brewery, which wouldn't employ very many people. That is in an area where there are 1,000 school children leaving school every year.

The unemployment rate would be about 26 percent in the '60s and now in the '70s too, 26 percent in Dungannon, 28 percent in Eurie, 26 percent in the Boggside, 30 percent in Strabane, and about 26 percent in West Belfast, male unemployment.

Now, since the troubles began in 1971, the British government has spent a capital cost of 60 million pounds on prisons. They spent up to 30 million on Long Kesh and 30 million scheduled to build this new place, Magerry. That is 60 million pounds. That is 120 million dollars or more, depending on the rate.

It costs roughly about I don't know how many millions each year, but somewhere in the nature of 10 millions a year to run those prisons, because I know the wage bill in Long Kesh alone is a quarter of a million a week. So you can work it out. It must be a colossal sum.

The point I am making is that in these jails then you have the children of the poor. They are from all the poor areas of Belfast, both Catholic and Protestant, from the Falls Road, from the Short Strand, Ardoyne, the Turf Lodge Road, the Boggside in Derry, from Armagh town, from Dungannon here, all the children of the poor who never could get a job, who were reared in very bad houses, and who never had any money in their names. It is costing at least two to three thousand pounds per year to keep each of them in jail.

In other words, what my question is, for all these big wigs that you meet around the country, why is there so much money for repression. Why can 60 million pounds be produced to build prisons and 30 million pounds a year to run them. But no money could be produced for the poor Catholics of Northern Ireland, provide them with houses or jobs. When they asked for them during the '60s, nobody could build factories for them. Nobody could do a thing for them.

And I remember speaking to Brigadier Bush one time of the British Army, and he was telling me, he said to me, "You know, the Catholics," he says, "have no interest in voluntary effort," he says. "They wouldn't join the RUC" and that kind of thing. and I said, "I beg your pardon, Brigadier, when you went into West Belfast in Operation Motorman in '72, there was no institution built by your government in the whole of West Belfast to accommodate your army. You had to go to Casement Park and take over a big stadium entirely built by voluntary funds, and you had to put your children into the Oliver Concord School and the St. Theresa School, which are Catholic Schools, built by the voluntary contributions of the Catholic people mainly. In other words," I said, "your government never built a single factory in West Belfast where you could put your army when you invaded the place."

So the point I am continually making is, the people at the top, they use public funds to oppress the poor, and then they use the courts and the media and the means of propaganda to cover up their oppression of the poor.

Mr. EILBERG. Father, would you explore further the privileges or benefits that the British are getting and hope to continue to get?

Father FAUL. What the British are getting here in Northern Ireland—well, you see they have control of Ireland when they have any part of Ireland in their control. That is very valuable for them. It still means—even in these days of nuclear war, it still means they don't have to defend their western flank, you know, and that gives them an access to the Atlantic through ports and airfields, and even if there is no war on at the moment, there is always the chance that there might be a war.

They also feel rather—the people feel so superior, as I was explaining to you. They do feel very superior to the Irish, simply because they are a nation who have exercised political, social, and economic power for many centuries, whereas Irish people, because they have been oppressed by the British, up until very recently, no part of Ireland was able to exercise political, social, or economic power.

Now the South of Ireland is doing it as best it can, and the North of Ireland never got the opportunity, and I think that is a very important factor. You Americans would probably understand that, what it is to be free and to be able to exercise your own political, social, and economic power. It makes an awful lot of difference to a man.

Mr. EILBERG. What profits in pounds or dollars are they taking out of Northern Ireland?

Father FAUL. Well, I would say they are taking a fair bit out. You see, they are taking out the food, for one thing. Don't forget that the British government runs a cheap food policy because they have got a vast population in England to feed; whereas it would be much more in the interest of the Northern Ireland farmers to have a dear food policy, the same as the boys in the South. In fact, many farmers around here would tell you that they would like an all-Ireland system for agriculture.

But Britain can exploit them here, you see, and get cheap food for a people. Also, the whole banking and insurance of the country is tied up with England, you see.

Mr. EILBERG. Can you be a little more specific on how they get cheap food, and as you go into this other area, can you give us some specifics.

Father FAUL. The Southern farmer, you see, has a thing called the green pound. Now, I don't understand every detail, but apparently it is an artificially inflated pound for purposes of selling cattle to the Continent, and the southern farmer can get 500 pounds for a bull or a cow, you see, and he is able on pigs and all that—he is able to get a much better price. He has these guaranteed priced for agriculture.

Now, the British, apparently insisted on Britain being made an exception to many of these artificially inflated prices.

Mr. EILBERG. From Southern Ireland?

Father FAUL. No, no. From European Economic Community. It has been a big bone of contention. The British keep kicking up rows, and they always seem to get their way in the economic community so that they will be exempt on the price of butter, the price of milk, the price of meat, so that their food prices can be kept down for the British public, because the economic community will not allow them to subsidize food as they always did in Britain.

Mr. EILBERG. But you are saying, then that as far as Northern Ireland is concerned, that they are able to buy food more cheaply here than elsewhere?

Father FAUL. I think they are able to get the cheaper prices in Northern Ireland now than it would be if Northern Ireland was joined to the South.

Mr. EILBERG. I understand. Now you said something about insurance companies and banks.

Father FAUL. Well, naturally all the insurance companies here are British based and the banks are merely branches of the British banks. Though some of the southern banks have branches here.

Mr. EILBERG. Does that mean that they actively discourage the development of local enterprise?

Father FAUL. Well, now, I couldn't say for certain we do have every appearance of that. West of the boundary there has been a tremendous discouragement of enterprise, as you can see. That is for political and bigotted reasons, you know. All the industry in this area is located around Antrim, Balomina, and Belfast. We have about three or four percent unemployment, in deeply Protestant areas.

But out here west of the Boyne, you have got none of that development, and Derry was deprived of the university; Derry was deprived of the new city; Derry was deprived of a port.

Mr. EILBERG. What about what they pay for labor costs in Northern Ireland?

Father FAUL. Well, the labor is cheaper here than it is in England.

Mr. EILBERG. How does it compare with Southern Ireland? Do you know?

Father FAUL. I couldn't really tell you. I would say it is slightly cheaper here, all right. The wages are quite high in Southern Ireland at the moment,

but then the cost of living is higher in Southern Ireland, so it probably works out about the same.

Mr. FISH. Father, was it always like this, or wasn't there a time prior to '68 when the Irish were involved in the management of these major banks in Belfast?

Father FAUL. Oh, there are plenty of Irishmen involved in the management of them, but even in Dublin, most of the banks are still controlled from Britain you know, and the insurance companies—quite a lot of them.

Mr. EILBERG. I think what Mr. Fish was saying was that in the '60s, as I recall, that there was a period of relative prosperity, there was a period of prosperity here in Northern Ireland.

Father FAUL. Prosperity for some. That is the important thing to remember. I can remember the people down here in the '60s living in rat infested houses, with seven, eight, and ten children. But you see, they were Catholics. Nobody gave a damn, because they were Catholics. They were the minority. They could be walked upon, while these other ones could parade themselves around and go down to the South and play in the golf clubs in the south and talk about how they knew the parish priest in the north.

No, people don't want to get down to read it the way it was, what it was like. Prosperity was there for some and the opportunity was there for some. The fact is, around here our kids from our grammar schools hadn't a hope of a job in the '60s, not a hope of a job. A Protestant with a very poor exam could get a job when a Catholic boy couldn't. Certain things at the Post Office and all were very difficult for Catholics to get jobs in as the imperial service and you had a better chance there than others.

Just look at the situation at Belfast, the shipyards belong to the Protestants, Sirocco, Mackey's have some Catholics, the RUC is entirely a preserve of the Protestants. You might say, well there are ten percent Catholics among the offices of the whole clerical administration. All those great reservoirs of employment are in their hands, even driving the school buses in these Catholic countries is almost 90 percent in the hands of Protestants.

Catholics aren't fit to drive a school bus to a Catholic school, in the eyes of the administration. The only thing we have is the building industry. I suppose that is why they are blowing up so many places, to promote the building industry. [Laughter.]

But anyway, it is the only industry we have any share of at all is the building industry. Even the nursing and medical professions and all. You look at who has got all the top jobs in them. I am sure over half the nurses in Northern Ireland are Catholics. I don't know of a Catholic matron in any hospital.

When McCluskey was here in Dungannon—Dr. McCluskey and his wife researched all this in the '60's, and they were sent around to the labor government and all that kind of thing, you know.

Mr. FISH. I am interested in what you said, a school bus, if I understand you correctly, to a Catholic school is paid for by the state?

Father FAUL. Yes, paid for by the state, yes.

Mr. FISH. What other contribution does the state make to the Catholic school?

Father FAUL. The state at the moment is giving 85 percent of the capital building costs. Prior to this, 66 percent. First of all we got nothing; then we got 50, then they got 66, then they got 80, now they have got 85 percent capital building, and full maintenance is provided, except for what is called the "four and two committee." It is a committee of four that are nominated by the Church and two are nominated by the state.

The education system from that point of view is okay, but then they have to do it because they are keeping in step with England, you see.

They did make an attempt one time to cut the children's allowances, you know, way back about 19—it was in the late '50s. They tried to cut the children's allowances on one occasion because there were so many Catholic children, and that is an important factor in the Northern Ireland situation. The Catholic children are 49 percent of the population. Therefore, a lot of the efforts of the state and its minions and the law is to get these Catholic children out of the country before they get to voting age. That is what led to the troubles here, really.

I am not saying that the Catholics would all vote for a united Ireland. A lot of them wouldn't because they are quite satisfied with the social benefits

they can get here, especially when you are unemployed. The social benefits are very good, your free medical care, your free education. Those are two, and you put on unemployment assistance, which enables Catholics to live all right because of their large families. You know a Catholic will draw 40, 50, 60 pounds and live on it.

Mr. EILBERG. Father, when we met with Minister Concannon and his group the other day, in response to my question about the debilitated housing and the awful appearance and some of the worse parts of Belfast, their reply was that they were in a building process. There were improvements in sight, new building——

Father FAUL. I think there certainly has been a big improvement in house building in the last ten years, no doubt about that. Since the Housing Executive took over the housing, took it away from the corrupt local council, there has been a vast improvement. Most of the Catholics now have good houses, though they are in ghettos. They are still in ghettos. I would say most of them I think have fairly good houses, or good houses are available to them.

There still is a housing problem. There still is a problem in house repair. We still have a lot of houses in Belfast to be fixed up, but I think in fairness one must say that there has been a very good improvement in the last ten years in the housing situation.

Mr. EILBERG. What is your observation on the ghetto-type areas that we saw? We are told that houses were built within the last ten years or so, and yet they seem to be gutted, bombed out.

Father FAUL. Well, a lot of those—that is up on Turf Lodge and past Belfast, Ballymurphy.

Mr. EILBERG. Yes.

Father FAUL. You see, they are fringe areas. They had to get out of those houses. They were too near the baseline of the Protestants or that sort of thing. It was dangerous to live in them because of the danger of being shot.

Mr. EILBERG. So that location is risky.

Father FAUL. It is too near the flash point areas. You see, for safety you have got to get back behind the lines a little bit. It is a sad situation in any city, and of course the laugh is that the poor are fighting the poor, you know. This is what is so silly. Long Kesh is all poor. Look down the list of assassination victims too, it's all the poor.

Mr. EILBERG. What would an enlightened government, whatever the sponsorship, be doing now with Northern Ireland? What programs do you suggest, Father?

Father FAUL. Well, they would have to do something about this system of law and order. That is fundamental. See, they are actually recruiting for the provisional IRA by the way they administer law and order, by this use of torture, ill treatment and brutality, cruel, inhuman, and degrading treatment, call it what you will. By arresting so many youngsters and ill treating them in the towns and the country, they are the best recruiting agents for the provisionals that I know. They are ensuring that this trouble is going to go on and on, and don't forget this trouble will repeat itself every decade until the British leave the country.

Mr. EILBERG. Now, what specific in the criminal justice would you like to see develop to improve the system?

Father FAUL. Well, they would have to do something about these detectives who are ill treating people. If they would deal with one or two of them. You get the impression that these detectives have been given carte blanche, that they have been given immunity, told to go and get the convictions, no matter what way you do it.

Until they deal with that—Granted, since the Amnesty Report was made public, there has been almost a cessation of serious ill treatment. Publicity is the only weapon and the only successful weapon, and if they could preserve that cessation it would help. It has been almost a cessation now. But if they could bring about a complete cessation, then there would have to be a review of the many, many cases that have been made by what we call "oppressive circumstances" or by oppressive methods in——

Mr. EILBERG. What about the Diplock courts? You would eliminate them, I take it.

Father FAUL. I would eliminate them, but I am not in favor of juries. Juries in Northern Ireland have always been corrupt one side or the other.

Mr. EILBERG. What would you recommend?

Father FAUL. Well, I think there should be three judges. The judges themselves, you would have to go down and take a look at some of them, because many of them are the products of the unionist administration, you know, and many of them are members of the establishment. They are not all bad, but some of them are quite.

Mr. EILBERG. What criteria or what requirements, or how would you go about picking better men for these positions? What system would you use?

Father FAUL. Well, I think there should be some system whereby they would be elected by the league or by the bar or by themselves. Like the College of Cardinals electing the Pope. Let the bar elect the judges.

Mr. EILBERG. Not the people. Not have the people elect the judges?

Father FAUL. I don't think so. People don't know the difference between a good judge and a bad judge. I mean, the members of the bar might, and I think any man who is engaged in politics should be eliminated from being a judge in this system here, anyway, because it is a Protestant/Catholic system, if you like.

See, a number of these judges, or the older ones, anyway, spent their lives in politics creating a system of social injustice, and it is too much to ask the ordinary people to expect that they when they sit on the bench to administer legal justice that they will do it fairly.

Now, there might be brilliant lawyers who might know the right page in the law books, but the fact that they have spent the earlier part of their lives in politics creating a system of serious social injustice more or less incapacitates them from obtaining the confidence of the people in the administration of legal justice.

Mr. EILBERG. Do you feel that the lawyers are best qualified to pick the judges? Let me say, Father, that in my city of Philadelphia, the bar association commonly has been dominated by a handful of large law firms and I would hate to think of my bar association at times picking the judges because it would be too hard for the common man that you and I are concerned with.

Father FAUL. Well, it might be better with a system like you have in America where these judges should be appointed for a limited term. It is also a great thing to keep a man in check, you know—some of us are in favor of appointing bishops for a limited term too, you know. It is one of the greatest way of keeping a man in check, you know.

Mr. EILBERG. The system we now have in Missouri and Pennsylvania and other states is that the parties each select a candidate and he runs for election, and then he serves for perhaps ten years, perhaps six years, but then when his term expires, the people are given the option to vote whether or not he should be retained, yes or no.

Father FAUL. There is something in that, yes. See, the trouble is, they are given tremendous immunity, these British judges, you know, and a good judge should have immunity, and a judge needs protection all right, but I think, too, you need to have a much better appeal court system.

See, the appeal court here doesn't seem to make a great effort to overturn or scrutinize the lower courts. They have overturned a few cases just recently, when Amnesty International came along, you see.

Mr. EILBERG. Do you know how many Diplock decisions are reversed at the appellate court level now?

Father FAUL. I couldn't give you the statistics, but I would say it is only about one in every 20, something like one in 20 I would say. But don't forget the foundation of Protestant ascendancy in the North of Ireland, that they have control of the police and the judicial system.

But it is their law and their place and their judiciary, make no mistake about that. That is the root of the system. I mean if you look at the record, look at the record over the last years, they have been found guilty of torture by the European Commission on Human Rights. They have been found guilty of cruel, inhuman, and degrading treatment by the European Court of Human Rights. They have been found guilty twice by Amnesty International, once in '71, '72, and again in 1978.

Yet they go on as if nothing had happened. They have never convicted a single policeman of ill treatment. What sort of a system is that? They just ignore the world opinion; yet they can shout their heads off about Brazil and Chile and Turkey and everywhere else.

See, I talked to the Dutch recently, and they said, "Well, you can't accuse the British. They fought with us in the war," and I suppose it is the same problem in America, you know, and they are the mother of democracy.

But all I have ever asked the British Army here for the last ten years, and note this carefully, I asked them just to keep their own law which was put up by the God Almighty Westminster Parliament, mother of democracies and all that hooley. It doesn't wash in Ireland, I can assure you. They have starved us and tortured us and taken away our language, religion, and culture and prosperity, for 800 years, 850, and none of that stuff washes with me.

I like the British people. I admire them. I visit their country. They are lovely people in their own country, not in this one, you know. You see, the Dutch had this problem with them too. You see, well, they said they are so nice and they represent the common law and all that. But you know, you know how common it is when you get down to the receiving end of it.

And when you see the head of the British—who is the head of the British judiciary? Lord Widgery. You ask Bishop Daly when he thinks of Lord Widgery. He will tell you, after the Widgery Report.

Your man here is going to take a picture of me. The last people who took a picture of me were the Russians, you know. I had them here, too. I had them four times. Well, I don't agree with what the Russians are doing, but I say the pot shouldn't call the kettle black. That is an Irish saying. Do you understand that?

Mr. EILBERG. Oh, of course.

Father FAUL. The pot is black and the kettle is black. Well, the Russians are torturing and so are the British. The British shouldn't be able to accuse them without being accused in return.

Mr. EILBERG. What kind of prison reform would you like to see, Father?

Father FAUL. Well, that is a very big question. I think there is a tremendous lot to be done in prison reform, but I disagree with putting two men into a cell that measures ten feet by nine feet by eight feet. That is wrong, a cell of that size. I don't disagree with the cellular system. Well, that is pretty fundamental, isn't it.

And I would also maintain that no man, no man, repeat, no matter what he has done, should be in jail for a period longer than ten years. I spent eight years in St. Patrick's College so I know what I am talking about. [Laughter.]

In a seminary, I can tell you. Institutional life makes you like a child. The seminary, the national seminary, someone called it the national cemetery.

But anyway, you see, any public institution which makes a man less a man, decreases his personality, destroys his initiative is thereby immoral. Public institutions of whatever kind they are should improve a person, and if they are not improving a person, then they are immoral, and something should be done about them.

Now, I think if a man is a psychopath, that he should be removed to a hospital after about ten years. Ten years is a limit, I think, and if they can't improve a man in ten years, then it has been a complete failure. I don't think a man should be stuck in these cells for 22 years, 30 years recommended sentence that Larry and his friend are handing out. That applies to Catholics, Protestants, what they call common criminals, political criminals, the lot, you know.

Mr. FISH. Are they being kept in prison for that length of time?

Father FAUL. Well, they have sentences. I don't believe they will be, but, you know, they may or they may not do it. What I mean, the sentences are 30 years. I know a man, an innocent man who is on 30 years recommended sentence—an innocent man. They were tortured into signing statements. I can give you the name of one: Pat Thompson from south Armagh. He was sentenced by Jones, and then Larry threw out his appeal. He had a very good lawyer, James Maca-Parn. James MacaParn was convinced he was innocent, as far as I know.

Mr. FISH. Pat what?

Father FAUL. Pat Thompson.

Mr. EILBERG. Father, where is he located?

Father FAUL. He is in Long Kesh, compound nine. See, your man President Carter—if you don't mind me making a comment about your man.

Mr. FISH. I don't mind at all. [Laughter.] I am a Republican.

Father FAUL. You don't mind.

Mr. EILBERG. I am a Democrat.

Father FAUL. See, Carter's statement about he will give us a whole lot of money if we settled the issue. It is only part of the problem. You can't buy people's sense of right and wrong and sense of national identity.

Mr. EILBERG. Father, he did not say that, in my opinion. In his statement of one year ago, he said the people in Northern Ireland should decide for themselves what they want to do and that when the argument is settled, then he would try to provide help for industry and jobs. I have read and reread that statement. I see nothing in it which suggests a role for the United States, according to Jimmy Carter, and I am not defending his position.

Father FAUL. But I mean, the point I want to make about Jimmy Carter, why didn't he say there is a serious lack of human rights in Northern Ireland?

Mr. EILBERG. Exactly.

Father FAUL. And he blew his trumpet about every other part of the world. There is more for a small community of a million and a half people, you read my books, there has been more violations of human rights here, proportionately, than there has been in Chile, Brazil, Russia, any place you name.

And yet he couldn't because he wouldn't offend the goddamn British. Isn't that it. They are old allies.

Mr. EILBERG. I agree.

Father FAUL. Why doesn't he think about Davy Crockett for a change.

Mr. FISH. Here, here.

Mr. EILBERG. What should the United States be doing?

Father FAUL. I say they should get up and tell the truth. We admire the United States. I admire your system of government: it is the most open in the world. You got rid of your president without shedding a drop of blood. That is the greatest political achievement I believe there has ever been.

Mr. EILBERG. You know, you are looking at two members of that jury, the Judiciary Committee.

Father FAUL. It was the best thing that was ever done in the world. It sounds incredible that the president of the most powerful nation could be removed without shedding a drop of blood.

I want to bring about improvement here by legal and political means and by publicity means.

Mr. EILBERG. What should Jimmy Carter or the Administration or the Congress or both be doing to help human rights in Northern Ireland, now?

Father FAUL. He should take up things like the Amnesty Report, and you know what is on your law book that you don't give aid to any country that violates your rights. That is on your law books. You don't give aid to any—I don't know who passed the bill, but it is passed. You don't give aid to any country that violates human rights.

Here, I presume, directly and indirectly, a great deal of aid flows from the United States to Britain in one way or another. I mean, you have subsidized their pound so much that your own dollar is now in trouble and that kind of thing.

Now, there is abundant evidence to establish—at least a strong *prima facie* case, that they are violating human rights in Northern Ireland. We have had the European Court. Commission on Human Rights. We have had the European Court on Human Rights, and you have had the Amnesty International Reports twice. Those are the things that go on, there is a serious degree of torture, and that was even admitted by the British themselves.

Can you continue to give them all the aid they want under those conditions?

Mr. EILBERG. My recollection is that Great Britain was a signatory of the Helsinki Accords.

Father FAUL. Yes, you could work on that one too.

Mr. EILBERG. Could we work on that one too?

Father FAUL. As far as the British, they are only interested in the money, like most people, they are a nation of shopkeepers.

Mr. EILBERG. What you are saying, Father, is that the United States should not be giving aid and support to the British while they are denying human rights in Northern Ireland?

Father FAUL. Well, I think they should examine—they should ask themselves the question and examine the question. Should we be supporting Britain fully, with all the aid she wants? And she gets an awful lot from America. She never paid her bill for the first war and she never paid her bill for the second war. It runs into billions, as you know, still on the books.

And should she be given those while Britain is violating—Because all I said, I come back to the question: If Jimmy Carter would ask the British forces here, the British Administration here, to keep their own laws, that is all I have ever asked of them, not to torture people, not to kill people, to make their own agents answerable to the law of the land.

Mr. EILBERG. All right. You have clearly said that the United States is not doing these things.

Father FAUL. No.

Mr. EILBERG. Help clarify for us why the United States, why Jimmy Carter, is not looking into the very serious question of human rights?

Father FAUL. Let me tell you the truth, and I will give you a fancy answer to that: The Americans have an inferiority complex, vis-a-vis, the British. They speak English better than you do, you think they do, and there is no doubt about it. You have this. You took the common law from them; you took certain aspects of the system of government from them, and any English lord, duke, king, or queen can go out to America, and the Americans will scrape and bow, and they will love it, you know, because you haven't got a king or queen of your own, you know.

In Ireland we are all descended from kings, you know. We are not worried about kings. We are all descended from kings. There is not doubt, the Americans have an inferiority complex, vis-a-vis the British, and Peter Jay, or some nice Englishmen comes over, as nice as they can be, just knocks you over, you know, and you love it. They can sell you their castles, and you take them out brick by brick.

Mr. EILBERG. Is it as simple as all that, Father?

Father FAUL. I think it is a mental, it is a mental approach. Then there is this thing about being your oldest allies and you fought with them in the war and all that. That is an important thing in terms of where it started. You see, it is very important that you keep this thing. Then I could go into questions about the unity of the WASPS, you know, the White Anglo-Saxon Protestants. I don't know what religion you men are, but I am just telling you this White Anglo Saxon Protestant thing. I could say you are all free masons too, you know, and the whole thing is an anti-Catholic business here. I could throw that one out, too. I don't know whether you are buffaloes or what you are in America, but [Laughter.] This is all part of the same big link-up and the monetary system and the whole thing. Popery means poverty. See these are deep things.

Mr. EILBERG. Father, let's go back to what is our domain, the House of Representatives and Congress. It is well known that Senator Kennedy and Moynihan and the Speaker of the House—

Father FAUL. They don't want hearings.

Mr. EILBERG. They don't want hearings?

Father FAUL. I don't know why that is. That puzzles me immensely, why they don't want—I can see a reason for it: Nobody wants to give comfort, aid, and support to the Provisional IRA. I don't, and I want to be very clear and I have been very clear that I am against the Provisional IRA, particularly the leaders. I don't like the leaders because I know they have treated any requests they got for mercy or humanity, with contempt.

I have no use of them. I make that clear. Not personally for them. Well, I don't mind these youngsters in Long Kesh, but the leaders I don't like, and I don't support them.

But the point is, I can see an argument all right there that they are holding up hearings in America to avoid the appearance of giving comfort, aid, and money, financial assistance to the Provisional IRA.

After I met the heads down in Killarney there in June, and I met the heads and talked to a lot of them and their chaplains. If you know who the heads are, then you know the Hibernians. They are a very strong American crowd, you know, and I found out why it is so.

Mr. FISH. What is it?

Father FAUL. Those people are sensible enough to distinguish between support for the IRA and support for the implementation of human rights in Northern Ireland. I think more of the American citizens, by now, are perfectly capable of supporting, of paying for human rights and for basic law and order in Northern Ireland.

Mr. EILBERG. I have heard on this trip to Northern Ireland, this fellow Hume, H-u-m-e.

Father FAUL. John Hume.

Mr. EILBERG. John Hume has had considerable influence on leaders that I just mentioned.

Father FAUL. Very big influence.

Mr. EILBERG. Could you explain that for me. I don't fully understand that influence.

Father FAUL. Well, of course, Hume is a very intelligent man, a very good speaker, and can present his case very logically. He is quite a well educated man, and he presents his case very well, and he speaks for non-violence also very convincingly.

Mr. EILBERG. We, like you, we are lawyers and members of the House Judiciary Committee, and we are concerned with fair trials, human rights, a criminal justice system that is equal.

Father FAUL. If you are replacing the army, keep the law.

Mr. EILBERG. Now, from what reading I have done of your writings, which I have not read a lot, but that which I read indicates to me that you are a legal scholar. I understand, and correct me if I am wrong—I am going to make a statement, and tell me whether I am right or wrong and how does the system really operate:

My question to you, Father, is, it is my understanding that the law here is that the Crown must prove beyond reasonable doubt that there was no confession—there was no torture used in the obtaining of a confession. Is that the law, and would you comment on that?

Father FAUL. Yes, well, Diplock incorporated Article Three of European Convention of Human Rights into his new court system, which states that torture, cruel, inhuman, and degrading treatment should not be used in acceptance of confessions.

Mr. EILBERG. All right, but is the burden of proof beyond a reasonable doubt—Is there a burden of proof beyond a reasonable doubt upon the Crown to show that in the Diplock courts?

Father FAUL. There is or the state must show that, I think.

Mr. EILBERG. Beyond a reasonable doubt.

Father FAUL. Exactly. But you see, the trouble is, a number of judicial interventions or judicial decisions, particular one by Lord Justice McGonnigal, which is quoted in the Amnesty Report. It stated that between cruel, inhuman, and degrading treatment and acts of law, shall we say, there is a very considerable area of small brutality that would not have been allowed in the old English Common Law System.

In other words, McGonnigal would say or did say, if I remember correctly in that Amnesty Decision, as quoted by Amnesty, that slapping a fellow around the face or giving him an odd push or thump or kick, would not constitute cruel, inhuman, and degrading treatment according to the terms of the European Convention of Human Rights.

Now, if you study our book and study the list of 20 methods of brutality, the list which I just supplied you with.

Mr. EILBERG. I have it.

Father FAUL. You can torture a man a tremendous amount without ever touching him, or put him in a position, stand him in a position of stress. Now, since we tackled them, the first time, the European Court got at them. Most of the methods that are designed not to leave marks.

For example, make a man stand for 17 hours, and you don't put a mark on him, and make him sit without a chair, squat like that. Many of these methods—make him do physical exercises, press-ups, squats, and various—running on the spot, strip him of his clothes and treat him in a degrading fashion. Many of these things can be done that can never be proved.

Mr. EILBERG. Is it your impression that these things, if proved, would still not constitute cruel and inhuman treatment?

Father FAUL. Some of them can't be proved because they don't leave marks.

Mr. EILBERG. Suppose they were proved, would that constitute cruel and inhuman treatment?

Father FAUL. How could they be proved? There is nobody present in these interrogation centers but the police. When the doctors are admitted, the prisoner has no marks. We have worked out some tests which indicate the use of stress methods and exercise methods, which I can tell you about later.

But if it were proved and the statements would be satisfied, short of producing a very extended medical report in courts about your breakage of limbs or heavy bruising, it is very, very difficult to overturn a statement.

Mr. EILBERG. What procedural forms would you like to see?

Father FAUL. Yes. The solicitor and doctor of the family's own choice should be admitted every day. The thing has been so bad for the last seven years, it has been so evil, so rotten, so immoral. There has been such a use of lies, perjury. There has been such a conspiracy and connivance from members of very high, legal people.

The only way is to have the solicitor and doctor of the man's own choice be admitted every day, and even that may not work. I have known cases where the doctor was admitted, and the prisoner was told beforehand—I know a case of a chap from around here. We sent in four doctors to him, during a seven day detention period—and by the way, that should be abolished, for start. The seven day detention period, it is too long; it gives too big an opportunity for torture.

This fellow wouldn't allow the doctor. He said he was perfectly all right, because he was threatened by the detectives if he made a complaint to the doctor, they would give him twice as much. So even sending in the doctor every day may not be the answer, and he would have to be a doctor who would win the confidence of the patient, and the solicitor would need to go in as well, you see, and the interrogations would need to be monitored.

And some of the detectives need to be disciplined. If they disciplined half a dozen detectives, and all the policeman is worried about is his pension, you know. If half a dozen of them lost their pensions, perhaps they would fall into line. In other words, make no mistake, if the government declared its policy to be against ill treatment, and discipline a few policemen—It is like a Bishop; if he hits one parish priest, the rest fall into line very, very quickly, I can assure you. Same system.

Mr. EILBERG. Do you have an opinion on the Willie Gallagher case?

Father FAUL. Oh, yes, he is completely innocent. A real farce, and if that case is proved, it will show the judicial system is rotten. There are many, many cases like the Gallagher case.

Mr. EILBERG. What do you think the chances are of a retrial in the Willy Gallagher case?

Father FAUL. Well, it will depend on the amount of public nuisance that it made. You see, all Mason or any British politician essentially think about is how big is the lobby. No politician that I know of is interested in what is right and what is wrong. They are only interested in how big is the lobby. If you make a big lobby for Gallagher, he will get his retrial. Isn't that it? I mean, none of your British politicians are worried about right or wrong, present company excepted, of course.

Mr. FISH. Father, you said that you agreed with those who distinguished between the IRA on one side and the human rights issue on the other.

Father FAUL. Oh, very much so.

Mr. FISH. But it seems to us that at some point there has got to be a breakthrough here because as long as the IRA continues, and even if the level of violence is considerably less today than it ever was before, it does give an excuse for the army to stay on, not in barracks, but in the streets and in people's homes and perpetuate this whole system, as you have discussed.

Father FAUL. Correct.

Mr. FISH. So what is the first step? We grant you there must be some higher regard for human rights than is now evidenced. As you said, not just a governmental statement about how conditions should be carried out under interrogation. But what do you see as the first step to break the cycle or to get us to a position of greater normalcy where people can start talking—

Father FAUL. In any situation of conflict, it is up to the most powerful partner to make the move, which in this case is the British government, as the most powerful partner in this now. They must admit that they have tortured and ill treated thousands of people, and they must start to rectify that.

If you showed some generosity or kindness, you would take away the water that the IRA swims in. You know, Mao Tse Tung, did he say—that is the way you deal with guerilla warfare, "You take away the water and the fish can't swim."

They tried internment for 4½ years. That didn't bring it to an end. They then changed this method of ill treatment at Castlereigh that doesn't leave marks. It would be very hard to turn it back now, but if they did make an effort to rectify

the question of torture and ill treatment in the prisons, I think it would take away the IRA's fire, because everybody is fed up with the IRA, you know, at this stage of the proceedings.

If you could get them together talking, get them to cease violence and to agree with each other would be a very, very great step forward.

Mr. EILBERG. Should the United States or can the United States participate?

Father FAUL. Well, I think there was this idea of a peace forum in Washington. That would be a good thing to get them together, you know, get them talking and get them to explain clearly what they want and what peaceful, legal, and reasonable ways that you are going to achieve it. That would be an excellent step forward.

Mr. EILBERG. But your prime emphasis is on the British. That is, they are the prime course?

Father FAUL. Of course. The British are the people who incite all this.

Mr. FISH. Don't you find it interesting, Josh, that the Father has gone so far in distinguishing between the IRA and other extremist groups and civil rights, human rights, but he wants that human rights issue to be tackled, without getting to the point of British withdrawal. He wants the British to initiate it.

Now, it seems to me, from what I have heard, and please correct me if I am wrong, but as long as the British army is here and as long as you have the provisional IRA dedicated to the removal of the British, then you are not going to have this commitment to end violence to achieve the political movement.

And the IRA tries to latch on. For example, in that big march on Sunday, the prisoners thought that the IRA would take it over. The relatives, they wouldn't let them take it over. The relatives have enough sense. The relatives of the prisoners are keeping that as their own method of publicity and protest.

Mr. EILBERG. Father, do you have an opinion on the new movement to bring the extremists on both sides together and whatever other parties can be drawn into a conference with the thought of achieving a free state of Northern Ireland?

Father FAUL. Well, I think any talking is always better than killing or shooting, but of course, when you use a word like "extremists" in the Northern Ireland context, you have to ask, who are the extremists? I mean, one school of thought would hold that Roy Mason is an extremist.

Mr. EILBERG. Well, I mean it in the sense, obviously, of IRA.

Father FAUL. You mean these IRA and loyalists. All right, they would be better off talking. But I don't think anybody in Northern Ireland is anxious to be ruled by those people, quite frankly, you know. I mean, they are not moderate and all.

Mr. EILBERG. Well, I am asking, if we could get some of these people together, talking.

Father FAUL. That might be true and it might not, but it is not quite—The British Army could be here in a visible and an invisible manner. For example, take any town, particularly this town, you can have different regiments here. We had regiments here that went about their duties and never gave annoyance to anybody and nobody was worried about them. In fact, they were probably glad enough to see some of them around the streets in case there be any kind of sectarian trouble.

But when you throw in a regiment like the Royal Marine Commandos or the paratroopers who annoy everybody, beat up people, innocent people, on the roadside and so on. Or the other thing, you have this Ulster Defense Regiment, in certain areas, you know, only—I will say, for example, South Derry and West Tyrone, go out of their way to humiliate people, park themselves outside of a Catholic dance hall, stop youngsters going to the dance, make them take off their shoes and stand in the wet and the snow, and in very many ways hold them up and prevent them from going about their lawful recreation.

That type of army treatment could all be stopped, and you could still have the British Army in the background, you know, for the moment, anyway, as a preventative to sectarian violence. The provisional IRA will undoubtedly go ahead, but they can only go ahead with some form of support.

Most of the people would be quite content at this stage of the proceedings to realize that violence has finished itself. I mean, if it ever did achieve anything, it has achieved it long, long ago. I suppose it serves as kind of a catalyst to initiate political change. Nevertheless, it has done that way back in '71, '72. It has long run its course.

Enough of the people would be content to answer to the question, have some leaders of the Provisional IRA got a vested interest in keeping the violence going? We know it is not going to achieve any political change at this stage.

In other words, I get the impression that the provisional IRA have what you call a "Viet Nameese" policy, you know, keep it going for 30 years and then they will all leave. You know, it has happened. But of course things are more complicated than that.

I could see that the British government could do an awful lot for human rights here, and without actually leaving. Eventually they will have to leave, I can see that, because the young people are present and they just won't tolerate them, throughout the country. But it could be done in an orderly fashion over ten or 15 years. In fact, I think even the young loyalists are pretty well fed up with them too.

Mr. FISH. Father, Reverend William Arlow, Anglican, said this to us yesterday, that he thought that making all sides share the blame—He said that the IRA, by their actions, are keeping the British here and that the British and the law enforcement by their actions was creating another generation of republican terrorists. Would you agree with that statement?

Father FAUL. I agree. Oh, absolutely. Absolutely agree with that. I would be very, very afraid, not of this outburst, I would be very afraid of what the next outburst in this province would be in ten years time. I would be very worried about it because, as I said, there is a certain antagonism to religion among some of the prisoners, and it may be only a passing phase, but the general feeling in the world of secularization and the influence of religion and the home and stability of morals is going down. I would be very afraid that the next generation of IRA men would be real terrorists. They wouldn't just be playing at it.

And unfortunately, in the eyes of, say, the Ergun and the PLO, they would probably regard the Ulster IRA as a kind of a children terrorists. They give warnings before they plant their bombs. I imagine that terrorists in other parts of the world would think that as rather insane.

I would be very, very fearful of the next generation of IRA, having gone through Castlereagh torture centers, and having gone through the H blocks at Long Kesh, they will be drained of all feelings about Christianity and humanity and will start no warning bombing all over the place. I am very worried about that.

Mr. FISH. You have been into H block, haven't you?

Father FAUL. Oh, yes.

Mr. FISH. We are told, of course, yesterday, by the Northern Ireland office, we were shown beautiful pictures. It looked like a motel with gardens around it and greenhouses—

Father FAUL. It is nonsense, really.

Mr. FISH. And then we hear about these stories, in the United States and elsewhere, H block has become a symbol of inhuman treatment. Can you tell us something about your observations of H block?

Father FAUL. When I was in H block—I am in H block every Sunday to say Mass, but on the 10th of August I went into hear confessions into H-5, and I went from cell to cell for six hours. The cells are dreadful, all right. They are filthy. You go into a cell and the walls are covered with excreta and with food, actually soft potatoes, carrots, peas, butter, crammed up against the wall. I had to open the door with my foot like that because it was covered with slime and vegetation of various kinds.

You see two men lying on the floor with a blanket or a towel around them, you know. Sometimes there were mattresses and sometimes not. The windows would usually be broken. The ceiling is covered with brown material, and you can imagine what it—it may be excreta; it may be spaghetti. I don't know what it is.

And the smell is like in a brewery or in the store of pub, the fermentation of food, you know, rotten, this smell is dreadful.

The prisoners are filthy: Their feet are filthy, their beards, hair. They are very pale; they are very thin. Their eyes are sunken into their head. Their hair is full of dandruff. They are wearing nothing but these blankets and towels. They have only got two little plastic pots there, no television, radio, writing material, reading material, nothing at all. The first thing they want to steal is your pencil.

Mr. FISH. These men you are describing are on the blanket, is that the phrase?

Father FAUL. Yes, on the blanket. They are all young men of about—most of them are young men of about 18, 19, 20, 21, 22 years old.

Mr. FISH. And they are protesting—

Father FAUL. There are 312 of them there.

Mr. FISH. 312 protesting the lack of political category.

Father FAUL. Yes. They want political status, yes.

Mr. FISH. And are they responsible for the filth themselves, the food and the excrement?

Father FAUL. No. Part, yes. I think that last phase. See, what happened was this: When in August two years ago they began this protest, the British government made a mistake by trying to beat them down with excessive punishments. They deprived them; they locked them in their cell. They gave them no physical exercise in the open air. They deprived them of books, newspapers, of writing material, of recreation materials, of studying materials. They deprived them of practically everything.

So the men took that for about 18 months, or 19 months. Then last April they completed the cycle of deprivation by refusing to wash and refusing to slop out, but it was the British government that made the initial mistake of imposing very, very excessive punishments.

I have made the suggestion, and maybe you could take this up publically yourselves: See, 90 percent of the punishment of imprisonment is being deprived of liberty. Now, even if you were put into the Waldorf-Astoria Hotel in New York and they wouldn't let you out the door, you would still feel imprisoned. That is punishment. You know, I don't know what it is like in the Waldorf; I have never been in it, but even if we were in the Hilton Hotel or the Europa. Loss of liberty is the main, 90 percent of punishment, is imprisonment.

Now, as you know, in most prisons, and here in Northern Ireland, a prisoner gets remission of half his sentence for good conduct. Now, I maintain, if a prisoner refuses to wear the clothes and refuses to do the work, he should be deprived of remission, and that should be the only punishment, you see.

By imposing all these things of loss of books, loss of exercise, loss of every form of mental or physical stimulation, by refusing to allow them to associate with each other and lock them into the cells, I think the British government made a grave mistake.

The only punishment should be loss of remission, but you see, Mason cannot allow that. That would pose a very, very big political problem. I think logically that should be the only punishment for any long period. You could deprive a fellow of his grub for one day maybe or something like that, but certainly over an extended period to deprive them entirely of access to physical or mental stimulation was wrong.

Mr. FISH. Why do you say this was a foolish mistake the British made? Is it because they have now created a group of martyrs?

Father FAUL. Because they are stuck with it. They are stuck with it. They have applied the maximum punishment hoping to break these prisoners, and there is no doubt these prisoners, judged by any human standards of endurance, all qualify for VC and King George Crosses. If there were British prisoners in Korea and they put up with this for two years, they would all get the George Cross in Buckingham Palace, you know. But just because they are mere Irish, you know, the Paddy land.

Mr. FISH. Comparing this to our POWs in Korea—

Father FAUL. I mean, you know how your men in Korea didn't stand up very well to deprivation, I must say. But I mean, these people stood up for this for two years, and they are singing and dancing when you go in. The morale is high, and they are shouting their heads off and writing Irish words on the wall.

Now, the point I want to make is that Mason tried to break them and he didn't succeed. Now, Nugent is coming out next year. Nugent is the first fellow to go in the blanket. Bill Nugent. He is on three a year sentence. He has to do every day of the three year sentence. But, boy, when he comes out, won't he be some symbol. He has beaten the system hollow. He has beaten the biggest degree of physical and mental deprivation that has even been imposed on a prisoner.

Mr. REGIS. When is he coming out?

Father FAUL. He is coming out next year. His three year sentence finishes. He has to do every day of it, and he is not about to break—, and he will spread the word.

Now,—I want to make a point about the political thing. Mason cannot afford, you see, to leave them there because they simply would sit in their cells for 22

years. If they allowed them to study and learn Irish—and just sit in their cells and do no work. He can't allow that. He has to break them.

Mr. EILBERG. Thank you, Father We have an appointment with Bishop Daley in Derry. Thank you, again.

B. MEETING WITH FATHER RAYMOND MURRAY IN WASHINGTON, D.C.

The following is a transcript of the recording made of the meeting with Father Raymond Murray in Washington on October 3, 1978.

Mr. FISH. This is Tuesday, October 3, 1978 and I have with me here Father Raymond Murray, a close collaborator of Father Denis Faul whom we met in Dungannon. Father Murray, welcome to Washington. Father Murray, what about H-Block at Long Kesh?

Father MURRAY. I would just like to give you an idea of the conditions of the men "on the blanket" at Long Kesh. Two weeks ago I went up to H-Block in Long Kesh Prison, the Maze, to hear confessions. The chaplain there needed a bit of help and I heard the confessions in D-Wing of H-Block Five. This was a way, if you like, of getting into the cells, because a priest can go around accompanied by two officers that open the cells. Now, I have been in H-Block before to say Mass, but you don't get into the cells. So this is my first experience of going into the cells.

It is divided into a number of wings, and the first impression that you have is that this block is underground, all heavy concrete and iron and painted white with blurring white lights. You go into one wing, you go through a large iron gate, and then you are in a wing which is a complete unit in itself with the dining room, showers, whatever, and there are about 25 cells. Each cell is meant for one prisoner. The cells measure about 8 feet by 8 feet, which is quite small. There are two prisoners in each cell. There is a great, massive iron door on the cell and the officer opens it out. It reminded me of a safe set into the wall. You go in and the first thing that hits you, of course, is the smell. The priest (the chaplain) has already warned you not to eat dinner before you come. There are two foam mattresses on the floor and these two bearded characters rise up from the floor clutching up their blue towels because they are naked. The doors are closed behind you. You have to stand because there is nothing to sit on; there's no furniture whatsoever. There is nothing in the cell, only two foam mattresses and the two prisoners. They have blue towels and black blankets, one black blanket each.

The walls which were once white are now black with dried excrement. The floors are slippery with urine and the mattresses are damp with urine. There is a pan, an open pan which is full of urine. There is a breeze from a little window which is about shoulder level, slit into the concrete, three or four slots, and the glass has been knocked out of those by the prisoners in order to let the fumes out because of the smell.

The first impression I get is that, my goodness, how can people be in this cell, because animals are better looked after in the country. Some of these prisoners that I met in this wing were from my own parish. There were three of them from my own parish whom I knew well. One of them I did not recognize. I was talking to him for a while and he kept talking to the other prisoners and saying Father Murray knows me, I was in his Irish class, and things like that. Then I realized who he was. He was a member of my own parish, but he had lost half of his hair and his weight was reduced by about half of what I was used to. So, they were so glad to see me first, and talked a lot. But one of them really frightened me. They all showed great morale, but one of them really frightened me. He was a fellow called Tony Quigley. His mate had been taken out of the cell. He had a bad rash that he had for a few months before he was looked after, and this guy was standing in the cell with his bare feet. His feet were encrusted with dirt with an old blanket around his shoulders and the wind and the rain howling into this open window, his mattress propped against the wall hoping that it would dry, and he kept saying to me with a big smile on his face, "isn't it quiet here," saying that he loved the quietness of the whole thing and that now he could think. You know when I thought of him in there for months and months and months, this was a married man, his mind was obviously gone. So I mean that's the conditions these men are under.

There are 300 of them like that. When I came in at lunch time on that day there was a great noise coming up from the prison. It was a celebration of the anniversary of Kieran Nugent who had been there two years on the blanket. It was the 16th of September when I visited and he had been two years naked in the cell.

These men are looking for special category status, which isn't unreasonable in my point of view, having been a prison chaplain for eleven years, in fact, what they are looking for in my honest opinion as a prison chaplain, is nothing more than an elementary reform of prisons because you have prison rules there that have existed from Victorian ages and they are looked upon as sacrosanct rules that cannot be changed. Why can't they be changed? In the Republic of Ireland, the prisoners can wear their own clothes and work is voluntary. So why not allow them to wear them? They allow the women to wear their own clothes and why not allow the men to wear their own clothes? After all, this is an extraordinary situation. It's no ordinary situation in the North of Ireland. Eleven years ago there were few prisoners in the country, maybe 700 or 800, and now there are over 3,000. So only if this thing had not come to their own doorstep they wouldn't be in prison. They've been arrested under these special laws and they have been given very special interrogations. In fact, I was just looking there a moment at Stan Chambers arrested in September, subjected on his first day to six interviews, extremely long interviews. They have special interrogations, they are brought before special courts, then why not put them into special prisons. So why not give them special status. Does Mr. Mason expect these men to remain to the year 2000 in prison? You know they have been punished to the point beyond any normal punishment. Surely, the ordinary punishment for a prisoner is to remove his freedom, give him loss of remission which they have done. They lose all remission. But it's still not punishment enough. Mr. Mason wanted to break this immediately and so he went to great extremes—24 hour lockup, no association with other prisoners, no reading materials, no radio, no writing materials, no communication, no physical exercise, whatever. He thought that he would break them within a few weeks, but now it's gone on for two years.

When these men had free association, there was a certain amount of respect for them. I mean you didn't throw them around, but now you have three men in a cell and you can more or less do whatever you like to them. This was what happened. There was vindictive action taken against especially young prisoners who were taken out and beaten. They were interfering with whatever mail was coming and they were interfering with the visits by making degrading searches. Women came a long distance from Derry to Belfast and maybe arriving there at 10:00 and maybe not getting a visit until half past three and maybe not getting a visit at all.

So, the men were pushed a full cycle because what other action can a prisoner take except that which has a strike element in it, and this was the only thing left to them. Now Mr. Mason has been taking a very hard line the whole way. My opinion is that this is a mistake because you never lose out by taking a soft line, a compassionate line. For instance, in the case of Monica Craig, I first wrote about that case in April 1977. It wasn't until she was nearly down to five stone in weight and in danger of death that they finally caved in in this case. I don't see why they don't take a more compassionate view. Now over the past seven or eight years, 5,000 people have been put in prisons, not to speak of 2,000 Catholic men who were in prison without trial, but that is over now. I think they have suffered a lot. It only keeps the ghetto scene and it is only the poor and the underprivileged that have been suffering. It may seem an awful thing for me to say that my friends are people who are in for political crimes. Some of the men are in for bombing, shooting, whatever. I know these people intimately and they would never be there except that this came to their doorstep. They are the ones that have suffered.

Mr. FISH. Father Murray, I would like to ask you a few questions here. I got the impression that the British really don't have the stomach to follow through, that they are dealing with a very tough group of people, the Irish, as you gave the example of men in H-block. I was only there four days and five nights, but we saw trucks going through Belfast with young British soldiers on it whistling at pretty girls on the side of the street and we saw the evidence in surveys in England itself where a majority of the population wants an end to the army rule of Northern Ireland. We see this tortured judicial system which must

disgust an Englishman who should be as proud as I am of their contribution to the common law and the element of cross examination in our trial system and the rights of defendants. I just got an impression that I want to test on you that they are trying to do this within the framework of being British, and it's not going to work. They can't turn around and really do a job like Adolf Hitler would have done under the circumstances. So, the handwriting is on the wall that they are going to lose. How do you see that and if it is a valid analysis, where do you see things the next few years?

Father MURRAY. I think that is a very valid analysis. I think the British have their own problems. They are worried about their economy and they were once a proud nation, they are no longer in any way a strong nation. They have their own problems with the economy and million and a half people who are unemployed. They are worried about movements in Scotland and Wales, and of course they have our trouble. I can't answer for the British. I mean I was delighted that a few months ago that the Solomon Islands after 85 years got its independence and I can't understand why we, living next door, can't get it after 850 years. I mean that if the Solomon Islands are able to look after themselves, surely we are able to look after ourselves. It's hard to know why they won't get out, but I think things, the situation at home is changing. We tried out power sharing, they tried out an assembly, they tried out the direct route, but as you know, the direct route can only be a lull because the motions and indications in this past year show there is a lot more talk of withdrawal. I wouldn't be too hard on the English, the English people themselves are not fully aware of the situation because a lot of this has been kept from them. There is a very close censorship on the press and on the radio and on the television about Irish affairs. We may see a lot about it on our own local programs, but when we go to Britain we are absolutely surprised that so much of what is happening around the North of Ireland is not getting through to the English public. I think that is why the Daily Mirror, which you might say is the pulse of working people in England, that the editor is a man of vision, who came out with his famous editorial page, an editorial in which he said, well we've come through this for ten years, so many other situations we have kept for ten years, the only answer to this is withdrawal. This had a terrific reaction from the English people because about a month later they published a survey of the letters they had received which showed that the vast majority of English people were in favor of a withdrawal.

I think the present government with regard to Ireland is pushing more for withdrawal in a very diplomatic way. The Archbishop was asked for his own personal opinion, not that he would push his own personal opinion on the people, but he gave his own personal opinion as to withdrawal. Just lately, at a Liberal Party conference, one of the senior liberals John Pardoe, spoke in favor of withdrawal. We know that Mr. Mason is taking a very hard line. He will live that policy out until the next labor election and until he is posted somewhere else.

But I think that the rumblings are for withdrawal. I think that this is also coming from the loyalist population who may not be thinking as yet in terms of united Ireland or even a federated Ireland, but they have been sickened by the treatment they have themselves received from the British, especially the loyalist prisoners who thought that they were working in the name of the English connection. Now they are toying with the idea of independence. They may have reached the stage of an independent Ulster. I think that they will come around to an idea of a new kind of Ireland in which they will play a large part because there would be a million of their people in it and they would have a big say in it.

My own philosophy is the loyalist of the North who were once more than a hundred years ago in the forefront in fighting for united Ireland. The united Irish men were largely led by Presbyterians of the North. I think that a great injustice has been done to them in their orientation and in the power politics of the old union establishment. So I can see a new kind of Ireland. They are learning fast because this whole thing was such a shock to them as well, that they are asking themselves who are we, what are we, where does our future lie, and soon we'll all come around to the idea that instead of being opposed to one another that what we have as our old traditions surely should enrich one another. Ireland just doesn't belong to one race, we have had so many invasions we are made up of so many different cultures and whatever and I think we can only enrich one another by these things.

Mr. FISH. Father Murray, what do you see as the role of the United States today and in the near future?

Father MURRAY. I think these past eight years when we were documenting all this material, we tried the diplomatic means. We thought we had nothing to do except to write letters to the Irish government and the English government and point out these injustices. That people were subjected to tortures by the hooded men, brutalities, and the degrading treatment in the streets. If you just ask yourself, maybe I shouldn't ask you this question, what would you think if soldiers from another nation, say from Mexico or some other nearby country were here patrolling the streets of Washington? I've seen young boys from my parish in the middle of winter made to take off their shoes and stand in the snow against the wall with their hands against the wall. I said to myself that these are my own flock and here they are standing in their socks in the snow with their hands against the wall, I mean why shouldn't we resent that kind of thing.

Now the role of the United States. We went into this publicity and started writing and because we believed that the pen is mightier than the sword. That was why we put it on the record and why we were so delighted about the Strasbourg Commission and Amnesty international reports. But now we are looking towards America, because we think that America can really put an end to all the violations of human rights. There is worldwide interest in it now, we know that President Carter has himself expressed deep interest. Now what can you do? I think that violations of human rights thrives on secrecy. As long as the British could keep this secret quiet, after all it was their back yard. Ireland has always been looked upon as their back yard. What does it matter if we degrade these people if it doesn't get out, if the story doesn't get out, they would continue to do it. So we think that the greatest thing that you can do, and you have already done it I think, that the visit of yourself and Mr. Eilberg to the North of Ireland was one of great significance. It wasn't the bird's eye view, it wasn't the primrose tour, you saw the ghettos and you saw the ordinary people and you listened to them. That was wonderful and I think the publicity, if you speak out, all you have to say is that you know the situation, that you are aware, that you have seen it for yourself, and that it is public now. Make these violations of human rights public. That's all you have to do.

The British are content as long as we would continue writing letters behind the scene because they are past masters of taking up your letter and writing back and keeping it all. If you go public on it they can't do this. That's why I am so delighted to be here myself because I know it's filtering back to them that I've been here. Not that I'm a very important person, but they do not like the story to get out.

Mr. FISH. On August 29 in the morning we were visited by Glenn Barr, Andy Tyrle who I gather is the Supreme Commander of the UDA, John McMichael and Harry Chickem and Tommy Lyttle. They were telling us that they had resolved themselves into an Ulster Political Research Group and were thinking in terms of an independent North Ireland constitution. They want to sit down with the very people of the opposing paramilitary forces that they had been shooting at to discuss the new concept. Later that day we met with the Ulster Independence Association headed by a man named George Allport.

Of course, when we finally got up to meet Mr. Concannon and his deputies they pooped these two elements as being nonrepresentative and very small and therefore of no consequence.

Would you suggest that we go ahead and have a meeting on neutral ground for example, right here between the two para-military groups, the Republicans and the Ulster Defense Association, to discuss possible solutions?

Father MURRAY. Go ahead surely. I mean the fact that you have talked to these people, the fact that they have talked about independence, all these are indications of an evolution. I mean, what a change, I mean two years ago these people were advocating political murder as a solution. If people can now come and talk, is that not marvelous, it's really wonderful, I think. Again the situation is changing and if you can give it another nudge, we don't expect miracles, but if you can give it another nudge towards dialogue, towards a working-out of the problems between the Irish people themselves. If you can act as the honest broker in the situation you will be doing a good job. I commend you for it. It can do nothing but good.

Mr. FISH. If I can be specific for a moment about the Willie Gallagher case. I saw his father, Brendan, here last week. Willie went off his hunger strike, and his father and family are convinced that it was because of the intervention of Mr. Eilberg and myself, whether it was or wasn't, they think that it was.

I understand that he has put on about 20 pounds, but as of the time his father left Northern Ireland last week and the last time he saw him Willie still couldn't walk. Now when he regains his health, he will be returning to H-block. I feel an obligation to follow up on our original appeal to Concannon, the Prime Minister, and Mason to intervene, or to have your friend and mine Denis Faul, intervene to give the fellow assurances that he won't be mistreated when he returns. Now I'd like to follow this up and I promised Brendan that I would with a letter to Concannon saying that I will be notified if Willie is mistreated, and that I would like this assurance. I will also go into the request for retrial because there seem to be such diametrically opposite views as to the boy's guilt that I think a retrial is in order. How can I find out or even intimate to Concannon that I will know if he indeed is mistreated when he returns to H-block? [See Chapter II, (E) and (F)]

Father MURRAY. Well, if he is physically mistreated, no doubt you will hear from us, because Father Faul goes into Long Kesh Prison every Sunday. He hears the stories and if anything happens to Gallagher we will let you know immediately. I suspect they won't because they know that you've got an interest in the case and they are going to be very careful not to touch him. But if he is, we will let you know immediately.

Mr. FISH. I do feel responsible and I would like to hear immediately. The reason I bring this up is because I heard about cases where other prisoners will communicate with them and say get your solicitor to come in and see you immediately following a beating. Then it takes a week to get to the solicitor, by the time you get into the prison, the fellow looks fine, he's recovered from his beating. So, do you think that Denis's coming in there every Sunday will take care of it?

Father MURRAY. These beatings are still continuing. In some situations in H-block it has even gotten worse. For instance, just before I left there was a case of a young lad from Dungiven, the same little town as Monica Craig, and he was accepting a visit. They have this terrible examination of the naked man, an examination of the back passage, in case they might have a cigarette lighter or something. They are taken out and placed on a table. An officer holds the legs and arms, four officers. On the day that he was going for his visit, they banged him so much on the table that they left him deaf with a perforated ear drum in one ear and half deaf in the other. That was on a Friday or Saturday, and on the following Tuesday, he was being transferred from one wing to another because he had made a complaint. Since the complaint was getting around among other prisoners, they took him out again on a Tuesday and this time there were eight officers. They bashed him down on the table holding his legs and arms and this time one of them took his head and smashed it down on the table and broke his nose. So he is now in the hospital, deaf in one ear, half deaf in the other, and a smashed nose.

Mr. FISH. Father Murray, we hear about hosing down the cells in H-block with very high pressure hoses with prisoners actually in the cells. Could you comment on that?

Father MURRAY. Yes. Well, before the Archbishop's visit the situation in H-block as a regard to the conditions of the non-slopping out was worse than it is now, because at that time the excrement was splattered right over the floors and it was very, very bad indeed and was heaped up in piles. Now after the Archbishop visited, they were so taken aback by his strong statement, his statement was very strong as you know, I'm sure you have a copy of it. So, they improved the situation by this hosing which means that they will come along and they will transfer prisoners from one wing to another and then they hose out the cells. Now, which means the cells even though they are very, very bad, still they are better than they were. But this hosing, of course, doesn't do away with everything, so what I mean is that it went on for so long and this excrement is as hard as iron, I mean the walls are just still black.

I do not know if they do turn high pressure hoses on prisoners, but what they do do is they come along having picked out a certain prisoner. Even the day I was in the principal officer came up to me when I was in the corridor, and said you may see something here which may upset you, but we have to do this job, do not think that we are deliberately going into the cell in order to maltreat a prisoner. You can stay here if you wish. You can go into a room if you don't want to look. He had with him four other officers who had white coats on them, giving it a medical kind of aspect. Now they didn't actually take a prisoner

out of the corridor in which I was in, they went to another corridor. But what they do is they go in and take out one man. He puts up a token resistance; he just does not go willingly and then he is dragged in and is scrubbed with a very hard scrubber which hurts him terribly. Of course, it is a bit of fun for them. He can offer no resistance and this very hard scrubber leaves marks and welts. I know that they do that and that is a fact. But I have no proof that they turn high pressure hoses on a prisoner.

Mr. FISH. Father Murray, in the political spectrum in Northern Ireland where does John Hume stand today and what would his approach be to changing conditions?

Father MURRAY. John Hume was at the university with me when we were actually under the one professor, Archbishop O'Flaich. We were in a very little group gathered for a few years. So I know him very well. I was in Strasburg with him as well when we went to give evidence. The SDLP has lost a lot of power these past few years and one of their main men, Paddy Devlin, has left them. Once the assembly finished, they had no where to go, kind of thing where a man has to look after his own job and again, I personally think John Hume has given up ten years of his life in very difficult circumstances. He has a wife and family. Well, it is his own personal thing, can he be expected to continue to have a basis in Ireland, live among the underprivileged and poor and daily fight for them, that's his own choice. I think he has chosen really that he has done enough and he has been given a job by the Irish government. He is very rarely at home, has moved to Europe and is a candidate for one of the three European seats for the European Parliament from the North of Ireland. He has moved out of the scene to a great extent and his party has weakened to a great extent.

Mr. FISH. What was his party's position, what is their platform or their approach in terms of independence, united Ireland, withdrawal, how do they fit into this spectrum?

Father MURRAY. Well, I think that this is one of the reasons for their weakness at present. They don't have a policy anymore. I mean that it was alright when the power-sharing executive was there and they all got big positions within it. But once that collapsed, a member of Parliament one minute, and then you are not. Where do you go after that? So for a long time they advocated the return of this power sharing executive. We've had direct rule, we don't know when it is going to end.

Our own idea is that Britain is dealing with this whole matter in the short term. As each situation comes they deal with it, but they have no vision of what is going to happen and so the SDLP is beginning to disintegrate. I think that when a man moves away from his base that he can no longer know what the feeling of the ordinary people are, and he is no longer working for them. I think John Hume has moved away from that.

The situation is still very grave and human rights are still being violated. Many people don't show as much now because they are more in an exhausted condition, but they are the weaker members of the Irish family if you like. We would like the Irish family here in America and interested people to help us to look after the weaker members. If John Hume and his party are no longer doing that then that's their choice.

That's the way I read it. I think the wrong impression was given here and that is one of the reasons why I was pleased to come here to say to you things are still bad and we still need your help. Human rights are still a major issue in our little place with a tiny population, when you look at how huge America is.

Mr. FISH. We call that three Congressional Districts for all 6 counties.

Father Murray, a minute ago, you mentioned the short term view that the British government is taking. I think it may be very helpful if you would move a step back from the actual examples of human rights violation to give us a picture of the economic and political situation. In the all too short time I had with Father Faul, he said this, "it is very important to remember the troubles here are about power, privilege and money and not about religion. Religion has been used as a label. It is not the main ingredient. The main ingredient is power, privilege, jobs and money and that is what it is all about. As long as the British government backs up one section of the community with their army and their money that is going to be opposition." I don't think we in the United States know enough about this very basic civil rights issue. I wonder if you could elaborate on that and give us a true picture of

just where the Catholic minority is today with respect to jobs and housing and what he was talking about.

Father MURRAY. I will try to give you a picture. You know that the partition of Ireland happened in 1922, that there was a war of independence where again people died, people suffered and there was a division then on the acceptance of the treaties. Some people said we've got so much let's take it, the partition will never last anyhow, and it seemed to be even in the minds of the British that this wasn't a permanent solution. So why not have peace now and accept a treaty. Those anti-treaty people said no, let's go all out for everything. So we had a tragic civil war which lasted for a year in which a thousand people died. So Ireland then was partitioned because of the opposition from the million of unionist people in the North. The idea of a British connection was, if you like, in their blood and this is what they wanted. But when partition happened, a minority was trapped. Within that very partition of the North, you had a sizable minority of 34 percent of the people who were of a nationalist bent and didn't want partition at all. They were trapped within the North which sowed the seeds for a future conflict as well. Now, true in national evolution in a generation the 34 percent would become 50 percent because of high birth rate of Catholics as compared to Protestants, that's only a matter of fact. Now what were the people in the northern states to do who were the majority now and who had the power they wanted to retain a hold on the Northern state. The only way that it could exist and this was their political thinking was that that minority must never increase, and it succeeded.

In 50 years, the Catholic population or the nationalist, use whatever label you like, if you use the label of religious terms it confuses people abroad, but, keep it in nationalist and loyalist. In fifty years, they made sure the minority never increased which it never did. Well, how did they do that? Through a policy which was a political decision, it became an economic factor because the only way they could do that was to put pressure on the Catholic minority to immigrate. That's why you have one million Irish living in Britain and Irish living in so many parts of the world. Immigration was so high among Catholics in the North because there was no future for them. All the top grades of civil service, this is made so clear in the Cameron report which labor government initiated in 1969 or thereabouts, to a policy of discrimination and no promotions, all the top grades of Civil Service were denied to Catholics, even for middle class Catholics, people who got around in the world, they never got any top positions. Then the huge industries of Belfast, the shipyards, only a few hundred Catholics were employed as compared to 10,000 Protestants. At best, a few hundred Catholics doing menial jobs driving lorries and something like that. The Sirocco works, Mackies foundry, the huge engineer works of Belfast, Catholics were not allowed into these places. Then they had most of the new factories, the heavy industry which was concentrated in the Northeast, new industries along with others which were brought there out of the Catholic areas. These jobs were denied. A place like Derry City which had, and one wonders why it didn't erupt more, unemployment of 25 percent, 30 percent, a nationalist population of 75 percent, they couldn't control their own local government because it was so gerrymandered that within one ward you had a majority of unionist who controlled the whole of the Derry area, and I mean that discrimination went on. Why did people allow it to go on because they were poor. They were weak, they had no power and the power and privilege went along with those who were of a landed class, gentlemen types who controlled the whole government along with industrial types, etc. So they controlled everything. Then how did they judge the ordinary working class Protestant man in Belfast. He wasn't all that well off, but he had one thing that the man in the Falls Road area didn't have. He had his job. He could go to work in the shipyards, he could work in Sirocco.

They built up a fear in him that he was going to lose his job if he didn't support the loyalist cause and that's why you have a reaction coming now from the Andy Tries, the Harry Chickens, the Tommy Lyttles, because they understand now how they were juked. Now, they want to come forward as a new people, and show themselves as risen people themselves. The bubble burst when the welfare state was brought in 1947, then the young Catholics could get a free education, they could move into the universities, and when that new young generation came out of the universities in the 1960's, they said we would no longer tolerate these conditions. That is how the Irish civil rights movement was founded imitating the American civil rights movements here. It could have gone on along those lines

only the toes say that we will not let you and the pressure came from above to squash them. So, you had counter-reactions to that of violence. So, we've had violence and counter-violence where you can call one side terrorists and you can call the other side legal terrorists.

Mr. FISH. That's a very important statement you just made, Father, and I thank you and I will see you again.

C. VIOLATIONS OF HUMAN RIGHTS IN NORTHERN IRELAND, 1968-1978, BY FATHER RAYMOND MURRAY

The delegation deems it appropriate to include at this point the complete text of a pamphlet based on speeches delivered by Father Murray to Congressmen in Washington, D.C. on October 3, 1978, and to the Ad Hoc Committee for Human Rights in Northern Ireland in Philadelphia on October 7, 1978 entitled: *Violations of Human Rights in Northern Ireland, 1968-1978*.

WE DEMAND

1. An end to 7 Day Detention.
2. An end to torture and illtreatment of arrested persons.
3. An end to imprisonment without trial.
4. An end to long remands without trial.
5. An end to the special Diplock Courts.
6. An end to deplorable conditions in the prisons.
7. A re-examination of all cases based on statements taken in Castlereagh and the rescinding of many sentences.
8. The release of 18 Irish prisoners in Britain who are innocent.
9. An end to Category A "Irish" treatment of prisoners in England.

VIOLATIONS OF HUMAN RIGHTS IN NORTHERN IRELAND 1968-1978

I am proud and happy to be here speaking about human rights in a country where president, congress, senate, and judges are committed to the cause of human rights in theory and practice. They have proved that they can solve problems of the gravest legal and social kind by legal and political means. They have shown to the world the meaning of open and democratic government. They have reconciled the people of America around the ideal of honesty, fair-play, and civil rights for all without factional and sectional violence on any large scale.

In contrast I wish to draw your attention to the sufferings that have been endured over the last seven years by a group of up to 5,000 men and women who have been imprisoned in the north of Ireland. All of them come from the poor areas of Northern Ireland. The vast majority of them are Catholic. They are the Irish poor and they have suffered gross violations of human rights. Many of them are the third and fourth generation of unemployment contrived by sectarian British Governments and bigoted Unionist administrations. In their areas unemployment is 25% to 30%. Many of those imprisoned in the last seven years saw their fathers and brothers dragged off to internment in August 1971, processed through the torture chambers of Palace Barracks, Holywood, and into the shanty-town prison huts of Long Kesh. They saw the British Army entering their homes night after night, insulting the womenfolk by foul and filthy language, tearing down the holy pictures from the walls with insulting words about Our Lord, the Blessed Virgin, and our holy father the Pope.

They were endlessly searched and frisked and made to stand in search positions or lie on the pavements of their own streets. If some of these deprived youngsters threw a stone or made a rude gesture or used a foul expression to their tormentors, or if they got involved in paramilitary activity and took more serious action against their oppressors, they had to suffer the full vigour of emergency laws, illtreatment, dragged before courts, given the maximum sentence. Many other young men and women who have never committed any crime, except that they were born in Catholic areas and bore the ancient names of Ireland, O'Neill, O'Donnel, McDonnel, Bradley, Heaney, McKenna, McCloskey, were also dragged off, illtreated and thrown into jail by the anti-nationalist and anti-Catholic legal

process. The ancestors of these young boys—O'Neills, O'Briens, McCarthys, O'Sullivans, were chiefs and kings in Ireland for a thousand years before the British ever came to the country. Against this wholesale arrest and imprisonment of young Irishmen we must set the astonishing fact that in the ten-year period, 1968-78, no British soldier or policeman in Northern Ireland has served a single day in jail for shooting dead 60 innocent people, torturing 800 people, using inhuman and degrading treatment on arrested persons. This fact has been publicly proclaimed on many occasions and the British have never been able to deny it. It indicates a very serious imbalance in law and order and the administration of justice. One can only presume that it is so arranged for political purposes of the British administration. I ask you a question—why should an ignorant 17 year old boy of deprived background meet with the full rigour of the law and the expertly trained British officer and police detective, who knows the law and is paid to administer it, be allowed to break the law with impunity?

Fr. Denis Faul, Fr. Brian Brady, and myself over seven years, in the course of 16 books and 30 pamphlets, and numerous submissions and letters to the governments of Ireland and England, have merely asked that the police in Northern Ireland and the British Army keep the law—that they keep within the very wide confines of the sweeping emergency powers that the British Government has allowed them to use in Ireland. They have signally failed to keep within these boundaries. Daily they have broken the law and in many cases broken it with the full approval and with orders of their superiors up to the rank of Cabinet Minister—we know this was true in the case of the men who were hooded and suffered sensory deprivation in August 1971. What I propose to do for you now is to trace the history of the violation of law by the British Government, the Unionist Government, the British Army and the RUC (the police in Northern Ireland) over the last seven years. I will tell it in a personal way as it affected me.

KILLINGS BY BRITISH SECURITY FORCES

The second man to die in the N.Ireland troubles was John Gallagher, a young married man from my own parish, the night of 14th August 1969. I live in rooms three storeys up and I had been watching a Loyalist crowd massing in the street outside the city hall where a civil rights' meeting was taking place. The leaders of the meeting, sensing the build-up outside and the heavy concentration of police told the crowd to leave and disperse to their homes quietly. The crowd were directed to the left by the police when they went outside. A short distance away the street had a left turning. Some of the crowd who turned down this street were met by a party of B Special police who fired killing John Gallagher and wounding some others. The Scarman Tribunal into Violence and Civil Disturbances in N. Ireland in 1969 was satisfied that the police did fire and that one of them did kill Mr. Gallagher while others wounded Mr. McParland and Mr. Moore. After making allowances for the strange, difficult and frightening situation in which the police found themselves the report said that there was no justification for firing into the crowd. The tribunal placed a measure of responsibility on a police inspector who put an untrained party of police from a country area into an alarming town riot without briefing or leadership. No RUC man has yet been charged with the murder of John Gallagher.

On 22nd August 1974 I wrote to Mr. Merlyn Rees, the Secretary of State: "On 14th August, 1969, John Gallagher, one of our parishioners, was shot dead in Armagh. Are police investigations still continuing into this fatal shooting?" The reply was that investigations had closed but would be reopened if fresh evidence was obtainable. The Report also found unjustified the killing of Patrick Rooney, a boy of 9 years, by the police in Belfast. The Report states—"We are unable to justify the shooting from the Browning machine gun which was responsible for the death of Patrick Rooney."

On 19 April 1969 police entered the home of Samuel Devenney on a day of rioting in Derry and beat him up in front of his children. He died in hospital in Belfast on 17 July 1969. He was 42 years old. Following an inquiry conducted by Scotland Yard detectives on the instigation of Sir Arthur Young, Chief Constable, Sir Arthur made a statement. He attributed lack of evidence to a "conspiracy of silence". I mention these deaths at the beginning of the present crisis because it is there the rot set in. You could be shot dead on your own street by the British Army or the police and nobody would be made amenable for the killing. Since that time some 60 innocent people have been killed in an unjustifiable manner by

British government forces—14 in Derry on 30 January 1972, 6 on the New Lodge Road, Belfast, 3 February 1973, and so on. On Saturday 15 June 1974 a 22 year old man, John Pat Cunningham from my parish, really a retarded boy who had the mentality of a 10 year old child, was shot dead by the British Army. He was afraid of the soldiers, having been beaten up by them on a previous occasion. The Army said they called on him to halt before they fired. There was no independent inquiry into his death. He was shot at 120 yards. The officer said he had his hand in his pocket. If he had been a gunman, what use would a pistol be at that distance?

Fr. Faul and I documented the cases of Leo Norney aged 17 years gunned down by the Black Watch Regiment 13 September 1975, Majella O'Hare aged 12 years gunned down by the Third Parachute Regiment 14 August 1976 on her way to church, Brian Stewart killed by a rubber bullet October 1976. By their actions in killing 60 innocent civilians the British Army have violated human rights spelled out in *The Universal Declaration of Human Rights* and *The International Covenant of Civil and Political Rights*. They have been guilty of unjustified, reckless and deliberate killings of innocent persons.

"Everyone has the right to life, liberty, and the security of the person" (Article 3 of the Universal Declaration).

"Every human being has the inherent right to life. This right shall be protected by law. No one shall arbitrarily be deprived of his life (Article 6 (1) of the Covenant).

Not only were these innocents—people like Patrick McElhone, Pomeroy, County Tyrone, taken out and gunned down in the field in front of his aged parents' house—Brian Smith gunned down by the Paratroopers while he stood chatting to friends in Ardoyne—deprived of their lives, but they were slandered by malicious lies promulgated by dishonourable officers that they were gunmen. Why can the agents of the British Government kill people manifestly innocent in very suspicious circumstances and never pay any penalty? Are they really operating under the law if they are never effectively made amenable to law? Are they above the law? Is there a conspiracy to make them immune from effective prosecution?

On 7 January 1976 the British Prime Minister Harold Wilson announced the use of units of the SAS, the Special Air Service Regiment, in N. Ireland—plainclothes irregular units. What the real motives of the British authorities were can only be guessed at but the general idea seems to have been to terrorise the people by assassination, by nightly calls to scattered families threatening assassination, by highly unorthodox and criminal methods contrary to Hague Regulations and Geneva Conventions. Fr. Faul and I chronicled the shooting of Peter Cleary taken out from the house of his girlfriend and her relatives and killed in a nearby field. So far in the past year the SAS have gunned down 8 people in cold blood—Colm McNutt and Denis Heaney in Derry, Paul Duffy in Cookstown, John Boyle in County Antrim, Jim Mulvenna, Dennis Brown, William John Mailey, and a Protestant William Hanna, in Belfast. This is known as the "kill, don't question" security policy and is a massive breach of the rule of law.

BRUTALITIES 1971-1972

I am a prison chaplain to the women's prison in N. Ireland. Eleven years ago there were only a few Catholic women held prisoner in Armagh Jail. In the past 9 years I have seen 120 women political prisoners in that prison at one time—32 of them interned. There are still 70 women in jail facing long sentences. In 1969 there were only 712 prisoners in prison in N. Ireland. Now there are 3,000. From December 1971 until August 1972 Armagh Prison was used for male prisoners on remand for political charges. That was a turning point in my life because I saw with my own eyes the bruising, burning, and after-effects of drugs and electricity used in their torturing. Let me outline the squalid, cowardly, bestial business.

On 9-11 August 1971, 342 men were arrested under special powers, cruelly illtreated and brought to Army Camps. That was the introduction of internment. 12 of these men and later another 2 were specially selected for torture by hooding, spreadeagling against a wall for days, being subjected to a high pitched noise, deprived of food, drink and sleep, and being badly beaten—all these tortures happening simultaneously and for 6 days. These became known as THE HOODED MEN. This was sensory deprivation. Two of the men were from my parish—Brian Turley, and a young married man Patrick McNally. The men suffered hallucinations. In High Court Settlements some years later they were all awarded

huge sums of money. They figured in the Compton Report, a committee of inquiry into allegations of brutality by security forces arising out of internment.

From December 1971 until March 1972 interrogation with brutality and a great number of torture methods were carried out against detainees to force them to sign statements admitting crimes that the police wanted to connect them with.

I met hundreds of these men in Armagh Prison. They suffered grievous psychological and physical brutalities. The men stripped for me and I saw their bruises. I think of Joseph Rafferty who had been held over an electric fire. He had severe bruising measuring 8 inches by 4 on his abdomen; Francis Maguire—here is an extract from the report of the independent doctor who saw him in prison:

"Examined 6:40 p.m. 7 January 1971. Examination of the trunk area of dark purple bruising in the middle just above the umbilicus 7½" wide and 4" high. Dark purple in colour. Right arm—purple bruising 6" by 3" in the medial aspect of the left upper leg. 4" wide purplish black bruise extending complete round the ankle. There was a bruise 1" in diameter over the anterior aspect of the right ankle which was congenitally deformed." Patrick Fitzsimmons was a well-known amateur boxer for Ireland. Here is an extract from his statement—he received electric shock treatment—printed in our book *British Army and Special Branch RUC Brutalities*:

"There were three men there with stockings on their faces. The head man says—if you want to have it easy tell us everything you done. When I said I had nothing to tell I was made to stand against the wall, fingers distributed and legs outstretched. I was beaten and kicked in the stomach and privates for about half an hour. I was made to lie on the floor. My pants and underpants were removed. One put his foot on my throat and the other held my legs. The other one lit matches. He blew them out and then held them to my privates. Then they made a few rude remarks about my wife and made me get up again. There was a rest for about 15 minutes. Then they took me out into another room. They told me to look around but I saw a man with a green apron and green overalls with a mask like a doctor. He was a heavy-set man. They made me sit on a chair facing the wall. They blinded my eyes with a cloth. They rubbed my arm with some stuff and I felt a jab in my arm. I felt my head dizzy. Then I thought they were taking my blood pressure for a band was wrapped round my arm. Then I felt an electric shock going through my arm. It got higher and higher and I felt it going through my legs and the rest of my body."

The *World in Action* team in their research for their programme on N. Ireland for independent Television, *A Question of Torture*, issued 25 September, 1972, came to the conclusion that the machine used to produce electric shocks to the men was a nerve or muscular stimulator available at medical equipment shops. This machine can be strapped on the arm and has electrodes capable of giving a powerful electric shock.

THESE ARE THE PRINCIPAL METHODS USED IN HOLYWOOD AND GIRDWOOD BARRACKS

1. Placing a man in "search position," single finger of each hand to the wall, legs apart and well back, on the toes, knees bent, for prolonged period.
2. Heavy punching to the pit of the stomach to man in "search position."
3. Kicking the legs from under a man in the "search position" so that he falls to the ground, banging his head on the wall, or radiator, or ground.
4. Beating with batons on the kidneys and on the privates in "search position".
5. Kicking between the legs while in the "search position". This is very popular among the RUC officers and they often do it for periods of half an hour or an hour.
6. Putting a man in "search position" over a very powerful electric fire or radiator.
7. Stretching a man over benches with two electric fires underneath and kicking him on the stomach.
8. Rabbit punching to the back of the neck while in "search position."
9. Banging the head against the wall.
10. Beating the head with a baton in crescendo fashion.
11. Slapping the ears and face with open hand.
12. Twisting the arms behind the back and twisting fingers.
13. Prodding the stomach with straight fingers.
14. Chopping blows to the ribs from behind with simultaneous blows to the stomach.

15. Hand squeezing of the testicles.
16. Insertion of instruments in the anal passage.
17. Kicking on knees and shins.
18. Tossing the prisoner from one officer to another and punching him while in the air.
19. Injections.
20. Electric cattle prod was used.
21. Electric shocks given by use of a machine.
22. Burning with matches and candles.
23. Deprivation of sleep.
24. Urinating on prisoners.
25. Psychological tortures:
 - (a) Russian roulette.
 - (b) Firing blanks.
 - (c) Beating men in darkness.
 - (d) Blindfolding.
 - (e) Assailants using stocking masks.
 - (f) Wearing surgical dress.
 - (g) Staring at white perforated wall in small cubicle.
 - (h) Use of amphetamine drugs.
 - (i) Prisoners are threatened; threats to their families, bribes offered, false confessions are used.

ILL-TREATMENT IN BALLYKELLY 1973-1974

From 1973-74 the main torture centre was Ballykelly Royal Air Force/Army Barracks. There young men and boys were brought for interrogation by the police, especially those men from Armagh, Tyrone, and Derry. In Belfast some RUC Stations and British Army posts were used for interrogation and beatings. The following are samples of illtreatment in Ballykelly:

Long hours of interrogation.
 Deprivation of sleep.
 Bullying and ignorant conduct.
 Foul and filthy language.
 Threats of UDA, internment, to life itself.
 Use of excessive heat in a black hole.
 Prisoners being struck and manhandled.
 Forced to do physical exercises for long periods.
 Forced to assume positions of discomfort.
 Use of hood.
 Hair pulled out.
 Simulated executions by clicking guns.
 Being shown photographs of the mutilated bodies of brothers and relatives.
 Offered bribes to turn informer.

THE BLACK AND BLUE BOOK

In April 1972 three men arrived in Armagh Prison on remand. They were so severely beaten they could hardly walk. They had to have their trousers slit and they walked with their legs apart. One of them had a fractured arm. They were the famous Edward Duffy, Gerard Donnelly and Gerard Bradley from Belfast who were severely tortured by RUC Special Branch men in Broadway Army Post. Their injuries were so bad they were sent from the prison to Musgrave Park Hospital. Their cases were brought to Strasbourg. The tortures and brutalities by the RUC were recorded by Fr. Faul and I in our book *The RUC: The Black and Blue Book*.

THE CASTLEREAGH FILES

Father Faul and I continued the catalogue of torture and brutality in our book *THE CASTLEREAGH FILE*, allegations of RUC brutality 1976-77. It is a large book of nearly 200 pages. There is world wide interest in the allegations about Castlereagh following the *Amnesty Report* after its mission to N.Ireland 28 November-6 December 1977. Amnesty has already issued a Report on N.Ireland March 1972 and concluded that persons arrested under the Special Powers Act had been subject to brutal treatment during arrest and transport and that there were cases where suffering had been inflicted on those arrested to obtain con-

fessions or information from them. The European Commission on Human Rights in Strasbourg found Britain guilty of torture in the Irish Government case against Britain alleging breaches of the European Commission on Human Rights, 1976, and in January 1978 the European Court of Human Rights in Strasbourg ruled that the United Kingdom Government had been guilty of inhuman and degrading treatment, contrary to Article 3 of the European Human Rights Convention, in the use of interrogation techniques. In 1977 the brutality of plain-clothes police in Castlereagh came under the criticism of the BBC "Tonight" team under Keith Kyle after its presentation of the case of Bernard O'Connor, the independent Television Network Team under Peter Taylor on 27 October when records of persons illtreated and records of doctors were shown on television, and in December the heads of the four main churches expressed their concern about serious allegations of illtreatment. The brutality in Castlereagh followed new techniques mainly designed not to leave marks.

20 METHODS OF BRUTALITY IN CASTLEBREAGH AND OTHER RUC INTERROGATION CENTRES

1. Hair pulling.
2. Punching to back of head. Heavy slaps across the face and head.
3. Simultaneous slapping of ears with both hands sometimes perforating eardrums.
4. Strangling neck. Chops to the throat. Gripping and pulling of Adam's apple. Pushing fingers into pressure points of neck.
5. Punches and kicks to stomach, buttocks, kidneys, spine. Stiff finger prodding to ribs.
6. Manual squeezing of testicles, punching and kicking testicles; lifting naked prisoners by placing stick between his legs.
7. Arm twisting. Bending wrist backwards both above and below arm. Finger twisting.
8. Positions of stress-search position against wall, sitting on non-existent chair, squatting hunkers.
9. Press-ups to point of exhaustion; super press-ups, legs on chair, hands on ground. Running on the spot to point of exhaustion.
10. Wrestling holds until prisoner vomits.
11. Strangling neck and forcing head down to the point of asphyxiation.
12. Trailing along floor; prone on floor while personnel stand and jump on back riding prisoner like a horse.
13. Made to lie centre across a table or chair face upwards. Interrogators then jump on legs causing intense pain to back.
14. Placing plastic bag, hood, jacket, or underpants, over head to restrict flow of air.
15. Throwing prisoner from one interrogator to another.
16. Simulated execution by clicking gun behind the head; simulated electrocution by putting plug into mouth and putting on switch.
17. Singeing skin with matches and cigarettes.
18. Degradations—making prisoner lick water or vomit off floor; behave like a dog, spitting in face; stripping prisoner naked and making obscene remarks about his body, his wife, his children.
19. Pouring liquid into ears.
20. Threats to shoot prisoner in lonely place, hand over to UVF, threats to parents and children.

BERNARD O'CONNOR

Here is an extract from Bernard O'Connor's statement:

"I was kicked around the room by both men on the legs and buttocks. I was fired around the room from one to the other. I was punched severely in the stomach several times, mainly by the older man. I was made get down on the floor and do ten press-ups and if I let my body touch the floor again I was kicked by the younger man on the buttocks. I was again put back on my toes and made stand again with my hands out and this went on and on. Finally they decided that it might be even better if I took off my clothes so I was told to take my trousers off. They then told me to take my underpants off. They then told me to take the rest of my clothes off, leaving me naked. I was pumped up and down with my head between my knees several times after I was fully clothed again. I was pushed into a corner and the track suit top which I was wearing was taken

off me and put down over my head by the younger man with the arms tied around my neck. I cannot say who tied them round my neck. My nose was closed off with their fingers and my mouth was sealed off with another hand. I couldn't breathe. During this I heard the older man say "choke the bastard". I found even my very stomach trying to come up my throat until finally I could remember no more for a short stage. I felt I must have fainted for maybe just a minute or maybe 5 or 10 minutes. I have no idea but I came round the same two people kicking me in the sides. I was made run up and down at the time, jogging and running on the spot, and each time I ran past them they kicked me on the legs and buttocks. They couldn't get me to run fast enough."

We documented many similar cases in THE CASTLEREAGH FILE. An interesting thing is that the book contains allegations of ill treatment by Loyalists and the inclusion of women in illtreatment. The statements given in our book suggest that the continuing illtreatment of prisoners is being done by a squad of plainclothes men, not by the uniformed men of the RUC. This squad of plainclothes men is centred in Castlereagh, but they appear to move about the Six Counties in the manner of a "Heavy Gang" and have been known to operate in many centres. It is impossible to understand how the chiefs and heads of the RUC in Belfast and various districts could be unconscious of the fact that this brutality is going on; it is impossible for the police doctors not to know it; impossible for the magistrates, impossible for the prison officers who receive innocent men into jail after being charged on brutality statements.

AMNESTY INTERNATIONAL

I praise Amnesty International for their mission to Northern Ireland 28 November-6 December 1977. The four member team was made up of Dr. John Humphries a Canadian well known for his work in human rights and head of research at the International Secretariat of Amnesty in London, Dutch Lawyer, Mr. Douwe Korff of the University Institute of European Studies in Florence, Dr. Kelstrupp and Dr. Ingelund, psychiatrists. They were available to everybody who wanted to see them. They worked hard until 2 a.m. in the morning. I witnessed the extreme attention they gave one of the cases I brought them—case No. 27, seeing him for two hours on one day and six hours on another day. Any organisation which is prepared to send two highly qualified doctors from the continent of Europe to Northern Ireland to examine an Irish country lad for a total of eight hours and issue a public report to protect his physical and mental health and secure his human rights, without charging a penny, has my unqualified admiration, thanks, and approval. I hope this organisation's work in Northern Ireland will find many imitators here in the United States.

OUR DEMANDS

Our demands are as follows:

1. An end to 7 Day Detention.
 2. An end to torture and cruel and degrading treatment of arrested persons.
 3. An end to imprisonment without trial.
 4. An end to long remands without trial of 12 to 24 months.
 5. An end to the special Diplock Courts where alleged verbal statements of an accused man are given out by the police and accepted on their word, where beating, thumping, and kicking prisoners and interrogating them for long periods, and putting them in positions of stress, are not accepted as cruel and degrading treatment and statements taken after these forms of ill treatment are accepted in court. There is great disparity in sentences and some of the sentences are inhuman—20, 25, 30 years recommended.
 6. An end to the deplorable conditions in the prisons. In H-Block Long Kesh (The Maze Prison) young boys of 17, 18, 19 are facing sentences of 20 to 30 years. They refuse to wear the prison clothes and do the work because they have been subjected to all these emergency laws and violations of emergency laws.
- They are locked up 24 hours a day in their cells, denied association with fellow-prisoners and contact with the outside world through radio, television, papers, writing material, reading materials. They are denied physical exercise in the open air and some of these young men have endured this for two years. No prisoners in human history have endured so much deprivation for so long a time.
- Likewise girls in Armagh Prison, both the 27 on protest for political status, and the remand prisoners, have been suffering a regime of excessive lock-ups and defeminisation.

7. We demand a re-examination of all cases based on statements taken in Castlereagh and the rescinding of many sentences.

8. We demand the release of 18 Irish prisoners in Britain who are innocent—9 of these have a life sentence. They were imprisoned by police action and judicial procedures which in my opinion are contrary to human rights. Sister Sarah Clarke, London, of the "Relatives and Friends of Prisoners Committee" has pointed out frequently the harassment of five prisoners in England who have been subjected to solitary confinement, segregation units, loss of privileges, strip searches both of the prisoners and their visitors, body searches, closed visits, curtailment of visits, curtailment of mail, curtailment of parcels. They are from a poor area of Belfast. Three of them are married and have nine children between them, another has a widowed mother over 80 years, and one is an orphan. Bishop Thomas Drury of Corpus Christi, Texas, has shown himself to be a friend and co-laborer in the work for prisoners in England. We demand the end to Category A "Irish" treatment of prisoners in England and the repatriation of Irish prisoners.

H BLOCK

I would like to say something more about H Block. Prison conditions have always been bad in this mile-square camp of concrete, iron, barbed wire, soldiers, dogs, hundreds of prison officers, men in cages. In 1976 the British Government said nobody would receive political status for political crimes committed after March 1976. The first prisoner—Ciaran Nugent was sentenced in September 1976. He has now been two years "on the blanket". If he can endure another year, he will emerge as a great hero. When he is released he will have served every day of his sentence on the blanket.

The British Government tried to smash his protest as quickly as possible and they deliberately imposed excessive punishments—no physical exercise, no reading material, no writing material, the men endured this state of almost total deprivation, 24 hours in cell etc., for 17 months. Then when they found the British authorities were interfering with their visits and their correspondence, and were continuing to beat up prisoners, especially young prisoners, they completed the cycle of deprivation by refusing to wash and slop out. This was an extreme measure. There are very few measures available to prisoners except there is a strike element of some kind in it. One would think the removal of remission adequate punishment. The loss of freedom after all is 90 percent of punishment in prisons. For instance what was remarkable about the prisoners demands? Every prisoner in the Republic of Ireland wears his own clothes and work is voluntary. The punishments that the British have inflicted 24-hour lock-up, deprivation of physical exercise and fresh air, no radio, TV, reading materials, writing materials, hobbies, games, all lack of contact with outside world, association with fellow prisoners—all these taken together and inflicted on prisoners for over 2 years—all this constitutes torture, degrading treatment, and is contrary to human rights.

Mr. Roy Mason, Secretary of State, is trying to break the prisoners by punishments which are inhuman by any standards because he cannot face the political consequences of confining the punishments to loss of remission. There are hundreds of young men and women aged 18, 19, 20 years on protest after sentence in the Diplock courts and these would sit in jail on protest for 20, 25, 30 years as a reminder to the public and to the world of the British use of torture, brutality, and dubious legal and judicial procedures. It would be impossible to establish a democratic system of government while the ghettos seethed with indignation.

Therefore the British Government must use their crude dungeon type brutalities to break the protest of the H Block men. They are seen by priests in their cells every week when they go around for confessions. The experience is a terrible one. The H block has an underground atmosphere, bare concrete bricks painted white, slashed with iron gates; the doors of the cells like great massive safes. On opening a terrible stench emerges. Two Rip Van Winkle types with emaciated white bodies and bedraggled hair and beards rise up from sponge mattresses that are half soaked with urine, clutching at their blanket or blue towel to cover their nakedness. The windows, little narrow slits in the concrete, let in the cold breezes which help to disperse the fumes. The once white walls of the tiny cell are now darkened with dried excrement. There is no furniture at all in the cells. You move from cell to cell and after a few hours you are glad to get away. You have taken the precaution of eating nothing. But these men are there all night, all day, all week, some of them for years. The inhuman condi-

tions in H Block have been deliberately created to suit the political purposes of the British administration, like many previous periods of Irish history. The British are prepared to use violations of basic human rights to create conditions suitable for the imposition of a British solution on the Irish people. Are the 30 million Irish people in America the 4½ million at home, the million in Britain prepared to allow them to do this?

HARASSMENT IN H BLOCK

Here are two examples of harassment in H Block:

Relatives visiting H Block

For personal reasons Gerard Deery who is on the blanket in H5 decided to take a visit with members of his family. Two sisters and a sister-in-law, three married women with seven children between them, went to see him on Saturday 23 September 1978. They left Derry at 7.30 in the morning and made the 80 mile journey. They arrived at the Prison Camp at 10.50 a.m. They were kept waiting until 2.45 p.m. Then they were told that they would get no visit. WHY? Presumably because the prisoner refused to submit to have his backside searched by the prison officers before coming out to see members of his family. They arrived home to Derry at 6.30 p.m.

This is abominable treatment for poor people. The women were 11 hours away on a fruitless journey. One of the women had to arrange for her father to look after her four month old baby while she was away.

ASSAULT BY PRISON OFFICERS ON A H BLOCK PRISONER

On Friday 15 September 1978 a 22 year-old man from Dungiven, County Derry, Liam McCloskey, was taken out to the circle of H Block 3. He alleges he was assaulted by 8 prison officers. Special medical examination since then has shown that he is totally deaf in one ear and partially deaf in another.

On Tuesday 19 September he was brought out from one wing of H3 for transference to another. He was compelled to undergo another search. Totally naked he was thrown up on a table by four prison officers, one holding each arm, one holding each leg, face downwards. This was in order to carry out an exploration of his back passage. A fifth prison officer banged McCloskey's head down violently on the table smashing his nose. He saw other prisoners getting the same treatment.

Liam McCloskey is a quiet inoffensive little person, always smiling. He is not the type to resist or be cheeky or start trouble of any kind. His treatment must rank as one of the worst kind of bullying by security forces in the last seven years.

ONE UNITED IRISH VOICE

In proportion to the number of the population in N. Ireland—which is 1½ million—or in proportion to the adult male Catholic population the number of grave violations of human rights have been greater in N. Ireland each year since 1971 than in any other country in the world.

The United States Government has shown itself gravely concerned about human rights in Russia, Haiti, Sierra Leone, South Africa. We in Ireland find it difficult to understand why a President and his Congress refuse to make a clear and explicit statement condemning the well-documented and well-proved violations of human rights in N. Ireland over the last 7 years. Have the Americans got some inferiority complex in regard to the British? Is the British influence in America so strong that it can pressure the freedom-loving Americans to ignore the catalogue of tortures? It is my opinion that the Irish people are not sufficiently united in speaking out with one voice for human rights for Irish people and for other people. We are a small race in the world compared to Arabs, Indians, Japanese, Chinese. We are sufficiently small to regard ourselves as a family. It is a poor and unworthy family that fails to defend its weaker members, those who are sick, in trouble, or in prison. A family weakens itself by showing division if it fails to speak up for members who are in need or who are experiencing violations of the basic human rights. What we want is to have the Irish in Ireland, the Irish in Britain, and the Irish in the United States of America—all 30 million of them—speaking with one united voice for human rights in Ireland and in the world.

We Irish are a people dedicated to the highest spiritual and cultural values. When we speak with united voice we will leave on one side leaders of violence who want exclusive control of prisoners and their relations for political reasons and on the other side certain Marxist elements who want to eliminate the decent middle of the road Irish family men and women and leave only a rump of wild talkers. We want the broad spectrum of Irish people in Ireland, in Britain, and in the United States to come together as a united family demanding decent standards for all people and especially for prisoners and the poor.

AN APPEAL TO CONGRESSMEN

Speaking to more than a hundred Congressmen in Washington, D.C., 3 October 1978, Father Raymond Murray made the following demands:

THE TRUTH MUST BE TOLD

1. Machinery should be set up so that the truth from Ireland can be circulated in Washington and read by Congressmen, Senators, and key pressmen.

2. More Congressmen should visit Ireland. Come officially as Mr. Joshua Eilberg, Mr. Hamilton Fish, and Mr. David Sorenson did. Come through your counsel Mr. Stout in Belfast, Tour the ghettos and get the bird's eye view—Turf Lodge, Ballymurphy, the Markets, the Short Strand, the New Lodge Road. This is not the primrose tour of Mr. Roy Mason, Secretary of State. You will not hear about H Block prison conditions or the killings of Leo Norney, Majella O'Hare, and Brian Stewart from the British or the Irish Embassies.

JUSTICE MUST BE DONE

1. Justice must be done. You must back up the Amnesty International Report on N. Ireland published June 1978 with all the power of the Congress. Call for a public inquiry into the tortures in N. Ireland, the prosecution of the torturers and the rescinding of all statements taken under oppressive circumstances and by oppressive circumstances and by oppressive methods in Castlereagh Police Interrogation Centre and other police centres.

2. I am addressing many lawyers and pillars of the law steeped in the tradition of the common law. I would like you to gather a committee under a personage like Mr. Samuel Dash to investigate the Emergency Provisions Act (NI, 1973) the Diplock Courts, the Prevention of Terrorism Act, and thereby restore the rule of law to N. Ireland.

HUMAN RIGHTS AND HUMAN DIGNITY MUST BE RESPECTED

The constant and particular interest of American Congressmen and Senators is necessary to scrutinise all legislation in N. Ireland in the field of human rights. This not only to establish independent procedures to end torture and ill-treatment of persons but to examine the whole area of jobs, houses, the routing of Orange processions, sectarianism in provincial and local government.

2. The particular interest and assistance of American Congressmen is required to secure the full development of all our people in accordance with their human dignity so that they be allowed to enjoy true religious liberty, full development of Irish culture, and all the resources of Ireland by the Irish people.

CHAPTER XV.—MEETING WITH BISHOP EDWARD DALY OF DERRY

On August 31, 1978, following the visit with Father Denis Faul in Dungannon, the delegation traveled to Derry to meet with Bishop Edward Daly.

The delegation earlier that day had been to Armagh Jail. The meeting with Bishop Daly began with a brief discussion of that visit. In addition, the delegation covered specifically the Monica Craig case with him, as well as Long Kesh, the general economic and political situation, and his view of the presence of British troops in Northern Ireland.

Excerpts of a transcription of the recording made by the delegation during this meeting follows:

Mr. EILBERG. We went in (Armagh Jail) under a ruse, quite frankly, because of the notoriety given our trip and the comments we have made as well as our expression of concern for Willie Gallagher, and our statements on the H Block. We also made a determined effort to get inside of Long Kesh.

We personally spoke to Minister Conneannon, and he refused to allow our visit. He showed us beautiful pictures, of course, and how beautiful it is supposed to look.

Bishop DALY. I spent seven hours there.

Mr. EILBERG. You did see H Block?

Bishop DALY. Yes, on the 19th of April, I was there for seven hours.

Mr. EILBERG. We would like to hear your views about that in a moment, but we would like to draw your attention to the Monica Craig case. While we were there, the Price girls told us that they felt that adequate medical attention was being given to the girl, but that of course she had lost considerable weight.

Bishop DALY. Anorexia nervosa. That is a very common disorder amongst young girls. Again, she is a girl I believe to be innocent in many ways of what she is charged with.

I spent about an hour with Monica.

Mr. EILBERG. Let me state the situation for just a second, and then I want to get your advice on it, or ideas on it. I was at first individually satisfied with the explanation of the Price girl that she was getting medical treatment, and the girls themselves seemed to be in relatively good spirits. Perhaps I did not get a sufficient sense of how bad the situation was. As Father Faul explained to us, he said that she might be getting medical attention, but that medical attention is really doing no good in terms of what her disease is, that what really needs to be done here, because the girl cannot just continue to lose weight. She has got to be paroled, sent to a hospital—

Bishop DALY. I think she should be completely pardoned, I have applied for that. I have got a file in there on Monica Craig. I have written many, many letters regarding her. I have gone to see her, visit her, and she certainly has faded away very, very considerably. Her condition, when I last saw her was quite alarming.

Mr. EILBERG. What did she weigh, Bishop, approximately, when you saw her last?

Bishop DALY. That is very hard to judge, really. But I would say certainly, in our terms, not more than about six stone, I would say. That is 14 pounds a stone—about 84 pounds I would say.

Mr. EILBERG. And what was her weight before that?

Bishop DALY. I just don't know that. But she has faded, certainly. But she is very thin and gaunt looking. She was in very good spirits, very good spirits, and she was in the hospital wing. You know she was comfortable enough, apart from

the fact that she was confined, and the people that were with her. She seemed to be on pretty good terms with them.

Mr. EILBERG. Now, she was down, as I understand from about 140 pounds or so. Bishop DALY. I don't know what it was originally; I just know she looked very thin and gaunt. I was seeing the Archbishop—actually the two of us went to see her together. He came with me.

Mr. EILBERG. And when did you see her? How recently was it?

Bishop DALY. It was, end of July, around then I saw her last, and I have been in contact since. I have applied—I have suggested that she get a complete pardon, that she be released.

Mr. EILBERG. To whom did the application go, did your request go?

Bishop DALY. To Mason.

Mr. EILBERG. And was there a reply

Bishop DALY. Yes. I will get it for you.

(Quoting from Bishop Daly's letter)—her release would not constitute a risk to the public and her continued confinement—will provide a disastrous long-term effect on her health."

(Quoting from the reply from Minister Don Concannon.)

"I am sorry it has taken a little time to reply to your letter, but we wished to get full and updated reports in the grave, medical condition of Monica Craig before writing to you. I understand she has been seen again by a consultant of medical diseases and a wide range of other expert opinions have been obtained on the condition or treatment.

"I am satisfied that every effort is being made to ensure that Miss Craig receives the best possible medical attention that can be made available. And the Secretary of State stated he does not feel able to alter his previous decision, that the circumstances do not justify him to recommend the exercise of the royal prerogative of mercy to bring about an early release from her sentence."

That would be a pardon, the technical word for pardon.

"However, you may be assured that I shall continue to pay close and personal interest to the case and that her physical and mental condition will continue to be very closely monitored by the doctors."

That is signed by Don Concannon.

Mr. REGIS. What is the date of this letter?

Bishop DALY. That is August 9th.

Mr. EILBERG. Has there been any public reaction that you know of?

Bishop DALY. There has been some, yes. But there are so many kids with this problem, one after another—some—worse. Many people come here other than you. I have got to the stage really where you are just so weary hammering one's head against a stone wall. I am quite convinced at the moment, I mean, the problem is that Mason and people like that do not apply moral principles to a situation of this kind, they apply political principles. If the thing is politically expedient, politically expedient is right. If it is not politically expedient it is wrong. That is their standard of morality.

Mr. EILBERG. And apparently at this moment their feeling is that it would be a sign of weakness if they were to act compassionately.

Bishop DALY. Well, to put it very bluntly, I think the real look at it is that there aren't any votes in it.

Bishop DALY. I think that is what it amounts to. It is as cold as that. I believe this little girl, at five and a half stone—that is what, 70 lbs., I believe that they won't make any changes in anything until after the election is over.

You see, one of the crucial situations with the problem here is the fact that Mason, Concannon, all these people, they have no votes in Northern Ireland, for starters. They work out of English constituencies, elected by English constituencies, and that is where their political power base is, so that whatever they do in Northern Ireland that doesn't raise hackles in England is not politically damaging to themselves.

So really they don't have any—any politician must be very much aware of his constituency at home, and their work is dealing with the situation of working with the constituency, and they have no feeling for the place, for starters, and this is why, I think, where human rights are concerned, where H block is concerned, where Monica Craig is concerned, where all of these people are concerned is of no concern to them. I mean, I spent every day, literally, I am writing to them, interviewing people, about people in prison, people who have been arrested.

I mean, you are just hammering your head against a wall. There is no change out of it at all. In all of my time as Bishop, I have been Bishop now for four

years, only once, in the case of a fellow named Peter Furly, did I get a royal prerogative of mercy. He was going blind.

But I think this girl here—I am quite convinced that this girl here, she was found, I think, in a car which had explosives in it. I am quite convinced from what I have heard about it—I didn't know her before she was arrested, but she was in a car, that she was simply there as a girlfriend. She was coming back from a night out. She wasn't aware that her boyfriend had explosives in the car, and she got seven years.

Mr. EILBERG. How old is she, Bishop?

Bishop DALY. How old is she? I would say she is in her early 20's, I don't know, that is just from looking at her, you know.

Sure, the female prisoners have got political status. They are martyrs, the best condition that I have seen anywhere for prisoners. They are very, very good. If one ever had to be in prison in Northern Ireland, the Women's Political Wing in Armagh is about the best conditions that one could have.

Mr. FISH. Bishop, you asked for a royal prerogative of mercy, a proper title for pardon. What other options are available, short of a pardon that would enable her to be physically removed from incarceration which from everything we have been told is the cause of her disorder. If she were put into a psychiatric hospital or if she were put into another environment.

Bishop DALY. Well, I don't believe putting people in the psychiatric hospital, quite frankly. That has happened before too, but it smacks too much of Stalin in Russia, for starters.

I think it is a case where I think the young girl was innocent in the situation. I think there is no reason why a royal prerogative of mercy could not be used, and I feel that there is every ground for that in this case, and on compassionate grounds if necessary. I think there are fundamental questions of doubt of guilt involved as well. But there are many other cases, and I don't think you can equate this case with, say, some, like Willie Gallagher. I think there is quite a difference.

Mr. EILBERG. What was your impression of the Willie Gallagher case?

Bishop DALY. Again, it was Diplock court situation. Reading the evidence of the court case, I thought certainly that there were no grounds. I think it was proved beyond a reasonable doubt that he was not the person who planted that bomb. I don't think there was enough evidence there for a judge to give a sentence of guilty, and certainly not a sentence of that magnitude—a verdict of guilty, and certainly not a sentence of that magnitude.

Mr. FISH. Is there anything else that we might ask for, short of a pardon, to just get her out of the place where she continues to deteriorate?

Mr. EILBERG. Is there such a thing as a parole.

Bishop DALY. Well, it is parole, yes. There is parole. I am not sure if she is eligible for parole at this point in time. You have to serve a certain length of time. It is the same in the United States. You have to serve a certain amount of time, and then you are eligible for parole, and then there is a review board, et cetera, and so forth.

Mr. EILBERG. Are you talking about the institutional remission? Is that what you mean?

Bishop DALY. Well, parole isn't institutional remission. Parole is before their time, and if they are convicted of another offense, then the thing is retroactive. That is different.

Mr. EILBERG. Father Faul said that "I think the Pope will make an appeal in private to the Prime Minister." Do you know whether that has been done?

Bishop DALY. I just don't know whether it happened. It is a case where there is a very rapid and significant loss of weight, a continuous loss of weight, and this is the effect.

Mr. EILBERG. Well, we didn't want to limit the subject to the case, although we are very interested in that.

Bishop DALY. Well, there are three major denials of human rights in the situation here: Arrest and interrogation procedures, two, the length of time that people are held in custody, before their trial comes up. There is a chap here who is hopefully coming up for trial at the end of next month. He has been in custody since February, 1977. He is over 21 months in custody, and his trial hasn't taken place yet.

He protested about this, and he had time taken off his remission. He hasn't even been found guilty yet. He has served 21 months in prison, which is equivalent to a four-year sentence, and they haven't found him guilty yet.

Mr. EILBERG. Under remand?

Bishop DALY. No, he is held in prison on remand.

Mr. FISH. That is because there is no bail for this type of political offense?

Bishop DALY. Conspiracy to murder is the charge. There is then the court situation, which is quite unsatisfactory. I mean, so many of those that are in prison have been convicted almost exclusively under the wrong evidence, and the circumstances by which that evidence has been obtained are very open to question. Amnesty International already has reported on that. There are many, classic cases.

Some people who have been through that experience are willing to talk about it. Some are not willing to talk about it. Of those that are willing to talk about it, many of them are not very articulate to explain it effectively, but there was one classic case of Bernard O'Connor. Maybe Father Faul or somebody mentioned that to you, but certainly he articulated very effectively what happened to him. He was a completely innocent person.

And after the courts, then, you have got the prisons. So you have got a whole structure from the taking into custody, the questioning, length of time held on remand before actual court hearing, the court hearing itself, and the prison system, and all of it, is certainly, I think, unjust, and I think the system just couldn't stand up to any kind of international tribunal that could investigate it.

Mr. EILBERG. How aggressive is the defense bar in these cases?

Bishop DALY. How aggressive is the defense?

Mr. EILBERG. Yes, the lawyers representing these people.

Bishop DALY. Again, this is something—there is such a volume of cases going through the courts. You see first of all the provisionals, for example, have adopted a policy of not recognizing the courts. To my mind, that is a noose around their own necks in many cases.

But even those that do recognize the courts, there is such a volume of cases going through the courts, that certainly barristers don't have the time.

In many cases I find young people going up on very serious charges with the counsel who would simply come in for a briefing, ten minutes before the case was to be heard. The guy was going to be sent up for 18 years. You know, I think that situation is not good enough.

In some cases, the brief was well prepared, but in many cases it wasn't well prepared because the thought, the attitude was, well, they have got a statement, the police has got a statement. The guy is going to get sent up anyway, and this is the attitude of some of the lawyers.

But that would be unfair to the legal profession as a whole, I think. There are some notable and outstanding exceptions in this regard. But, you see, there is a far wider context in this, I think, and you have got to look at the British context again.

I mean, I witnessed, myself with my own eyes, people being murdered by British soldiers, totally innocent people, here in Derry on Bloody Sunday, I administered the last rites to most of them. I was a curate here at that time, and I remember the agony of decision when the Widgery Tribunal was up, but Norwich was the Lord Chief Justice of England, the senior legal person in the British system, and he was sent over to take charge of the tribunal and inquire of the shootings of Bloody Sunday. His judgment was just simply an exercise in semantics. Imagine the shooting dead of 13 people, one by one and the injury of 29 others, without a shot being fired on them.

It was described by him in his judgment as firing bordering on the reckless and none of those soldiers was convicted of anything, charged with anything, and to top it all, the general in charge was decorated.

Mr. EILBERG. That occurred in 1972?

Bishop DALY. Yes, 30th January, 1972.

It occurred here, just down the street, just a hundred yards from here. But at that stage, you know, certainly any credibility that English law had as regards their system here, certainly as far as I was concerned, that was the end of it.

Mr. EILBERG. Are there any other agencies who are interested in this?

Bishop DALY. The only international agency, really, is Amnesty International, and the European Court, the Commission on Human Rights. But again, where a sovereign government is concerned, there is very little that these people can do except to hold the thing up to the whole world.

Mr. EILBERG. Well, they issued this report, which came out in June, I believe. We had read it and have it with us. Have they been interested in other than the Castlereagh relation? Besides that, have they been active?

Bishop DALY. Well, if you use American language, I think a snow job has been done on us, really, and a fairly effective one, where the British are concerned. They have set up a tribunal inquiry that is not inquiring into things really that Amnesty highlighted, and it simply to my mind is a red herring. It is inquiring into something that Amnesty didn't really bring up.

Mr. EILBERG. In what sense?

Bishop DALY. Well, it is inquiring into not so much the interrogation procedures. Let me try to recall exactly what the tribunal has been set up to do. I just can't recall just now, but I know it is not inquiring into the matters that were raised by the Amnesty Report so much.

Mr. EILBERG. What about the organization, the equivalent of our American Civil Liberties Union. I have seen—references to it.

Bishop DALY. The Council for Civil Liberties, a London organization.

Mr. EILBERG. Yes, the National Council of Civil Liberties?

Bishop DALY. Yes, NCCL.

Mr. EILBERG. Now, what work is it engaged in, and how do you react to it?

Bishop DALY. Well, you have got many different bodies. You have got the Association for Legal Justice, the ALJ, in Belfast. You have got the National Council for Civil Liberties working out of London. You have got Amnesty International who works out of Geneva, I think, and all of these bodies have operated here. All of them have highlighted the injustice that exists here.

Individuals have done so, Father Faul has done an immense amount of work and Father Murray also. I have spoken about it on many, many occasions to the point of weariness and exhaustion, and you know nobody has achieved any change in the action of the British.

Mr. EILBERG. Has there been any appeal to any international agencies?

Bishop DALY. Yes. The European Court of Human Rights, heard it and found them guilty, but the people that they find guilty, have never been brought to any kind of tribunal hearing to answer for what they have done.

I will give you a very typical example here. I don't want to go back years ago, but just a typical example in which I was involved myself. I mean, I was involved with the Bloody Sunday thing. I witnessed those things myself. I was sworn; I was cross examined. I spent four hours in the box giving testimony—nothing happened.

Mr. EILBERG. We are greatly interested in the H block situation. Of course, we have read the Archbishop's Report. I would like to hear what you have to say on this.

Bishop DALY. Well, I issued a statement after I was there, too.

At the time I was there, there was still furniture in the cells. They still had bunkbeds.

Mr. EILBERG. When was that?

Bishop DALY. I was there on the 19th of April of this year. I spent seven and a half hours there. They still had bunkbeds in the cells. They still had a bookcase, or a little bookshelf, a bedside table and chairs, et cetera.

The strike regarding washing and so forth had only been in progress about two weeks at the time. I mean, what the Archbishop saw was a much worse situation than what I saw, although what I saw was frightening, frightened the hell out of me, I will tell you that. I was very nauseated by it, revolted by it.

The filth was quite indescribable. The cells, the cells were filthy. The whole place was oppressive. It was an intolerable smell.

The morale of the people in the cells was sky-high and still is from what I hear. The heat at that time, it was April, the heating system was still going full blast, and it was very, very warm. Chaps inside were dressed just with a blanket around the waist, and certainly I am surprised that at this point in time, almost four months later, that there haven't been any of them that died.

Mr. EILBERG. That was my next question, if any of them died.

Bishop DALY. Not in the H block, to my knowledge. No, I don't think anybody has died in H blocks as yet, which is surprising, or that some of them haven't succumbed to insanity at this stage, but I certainly believe that in the long term serious damage will be done to physical and mental health.

But at the same time, I think I must add that there are two aspects to this, I feel, that the British, that their position is untenable as regards the treatment of

the people in H block. I think that the best, the most effective form of pressure on them could be, and I said this in my statement and I got a lot of arguing about it, but I do feel this very sincerely, that if the provos were to declare a ceasefire, I think that would put unbearable pressure on the British to change the situation.

Okay, I don't know how that would be technically achieved, but my one concern would be that any individual there could lose his life. I do think that the continuing campaign of the Provisionals makes things very difficult for those of us trying to promote human rights because where the British politicians are concerned, they are playing up largely to the unionist population here. Situations where a British officer outside a church, standing, posing for his wedding, photographed, being shot.

It makes the work of anybody trying to promote human rights on behalf of those who are members or were members of the provisional IRA very, very difficult. But I think that the two things should be divided, and I think if human rights are being contravened by government or by a guerrilla group, it is wrong, period, whatever is going on on the other side.

But it would make things a lot easier for those trying to promote human rights and human dignity if this were to happen. You know, I don't think that you can take the thing in isolation, really.

Mr. EILBERG. I am not sure that I quite understand when you talk about provos. Are you talking about paramilitary?

Bishop DALY. All paramilitary groups, yes. All paramilitary groups. But really, the most active of them at this point in time would be the provisionals. The loyalists have been fairly quiet recently.

Mr. EILBERG. And you believe that if the British were not incited in this way that they would be less repressive?

Bishop DALY. Well, I think this makes it easier for the British to excuse themselves, and you see, the American government, really, I think, can have less influence on the British government than European governments within EEC. I think these are the governments that really can put the big squeeze on.

Mr. EILBERG. Why is that?

Bishop DALY. Because within the EEC contacts, Britain is one of the lamer ducks within it, and they do depend on—they are vulnerable, I think, much more vulnerable than Germany or France, particularly where sterling is concerned. Economically I think they are much more vulnerable where they are concerned, and they are cheek by jowl within the EEC.

Mr. EILBERG. Bishop, have efforts been made to get EEC interest?

Bishop DALY. Efforts have been made, but in the last year, you see, the situation has changed. You have, and I think the British are very much aware of this, and they are playing this card as only they can. They are the oldest at this game in the world. I have contacts with different European bishops, different European organizations on the continent of Europe. I spent six years of my life in Italy. I have got a lot of contacts in Europe, and I have tried quite successfully up until about 18 months ago with many of these European organizations to exercise pressure on Britain or on corresponding organizations in Britain.

But since the emergence of the Baader Meinhof groups and the Brigade Rosse in Italy, the British are saying, you know, "You have your problems with the Brigade Rosse, we have ours with the provisional IRA." They equate the two, despite the fact that they are quite different.

But in the eyes of European people, I mean, after the murder of Schleyer in Germany, murder of Moro in Italy, I mean, none of those governments are going to put an awful lot of pressure on the British to go easy on people whom they identify with the Brigade Rosse.

Mr. EILBERG. You seem to give up on the idea that the United States could play a major role here. What is your thinking about pressure from the United States coming from the administration and Congress?

Bishop DALY. Yes, I think both can exercise a degree of pressure, but I think really the key to the problem would be if—I think, America could marshal many of the European governments to really put the squeeze on. I think that is what would really count. That is my own feeling.

Mr. EILBERG. You know of course that Senator Kennedy, Tip O'Neill, Hugh Carey, and others are opposed to any hearings on this subject. There is considerable interest in the Congress, in my opinion.

Bishop DALY. Well, I don't know. I would agree very much with the stand that they have taken. I can understand this as a reasonable and realistic stand. I

have known Ted Kennedy for seven years. I admire him greatly, and he is one man who was interested in Northern Ireland long before any other American politician was. I mean, he has been sending people here three or four times a year, all over seven years. A politician who is as closely in touch with that situation cannot be dismissed.

Mr. EILBERG. I didn't mean it that way. I just wondered why?

Bishop DALY. I certainly can—Ted Kennedy has been in regular contact with me long before I became Bishop, and since I have become Bishop. He rings up regularly and gets updates on situations and is possibly the best informed person over in the United States of the situation, one of the best, certainly, as a person in a senior political position.

Mr. EILBERG. What is the argument against holding congressional hearings?

Bishop DALY. I don't know what the argument is against congressional hearings. I mean, we had congressional hearings in '72. What did they do?

I mean, to my mind, I went out there and spent five or six days out there, and it is a complete waste of time. Ted Kennedy gave evidence at those hearings. He opened the evidence, actually. But I think that congressional hearings are simply window dressing. I feel, if there is going to be anything done, what we have got to get is a realistic statement from the Administration, from the White House.

To Britain, Jimmy Carter needs to say, "Look, clean up that mess. Prison conditions are intolerable. The court system is intolerable. You have been indicted by Amnesty International. You have been indicted by the European Court of Human Rights. If you are going to retain the place that you would wish to have in the world, clean up the mess that you have got, and I think it would encourage other European countries to do likewise, put the same type of pressure on them.

Because the British are quite hypocritical where this is concerned. They complain bitterly about what happens in South Africa, Rhodesia, and so forth, but they have got the worst slum of all in their own back yard and I think that is the type of thing that is needed. I think congressional hearings simply are, quite frankly, a bit of decorative wall paper. Certainly it might be all right for internal things in the United States, but really, I don't know.

What I want is action from the White House, and that is the only type of thing which is going to make any impact. I mean, you can have congressional hearings until you are blue in the face.

Mr. FISH. Well, I tend to go along with you on that issue. I take it, since we have been talking about the political situation here that your primary interest is in the area of human rights and the four phases that you have discussed with us.

Bishop DALY. Yes, there are five, I think: There are arresting procedures, interrogating procedures, courtroom procedures, remand procedures, and prison conditions.

Mr. FISH. And that situation could be vastly improved within the political framework right now.

Bishop DALY. Oh, yes.

Mr. FISH. It could be initiated by the British while their army is here and while every thing else is going on. But you do think that certain steps must be taken.

Bishop DALY. Well, that is dealing with the symptoms of the problem. I think, too, that there has got to be a realistic look at the problem. The problem is the British presence here, and I think that has got to be looked at. I mean, all these other things simply spawn problems, and I think there is no use—Okay, in the short-term one must deal with symptoms of the problem, but if one is to remove the symptoms completely and permanently, one has got to tackle the problem.

And I think until the problem is tackled, the symptoms are going to be there. The effects of that problem are going to be there.

Mr. EILBERG. Bishop, I was just recollecting the President's statement, President Carter's statement urging peace in Northern Ireland, which he issued August 30, 1977. I am sure you are generally familiar with it.

Bishop DALY. Yes.

Mr. EILBERG. And I will read it again, just a short paragraph: "U.S. Government Policy on the Northern Ireland issue has long been one of impartiality, and that is how it will remain. We support the establishment of a form of government in Northern Ireland which will command widespread acceptance throughout both parts of the community. However, we have no intention of telling the par-

ties how this might be achieved. The only permanent solution will come from the people who live there. There are no solutions that outsiders can impose."

He uses pretty strong language in terms of solutions that outsiders can impose, but he says nothing about making overtures, about doing the very thing that you described.

Bishop DALY. Yes. They talk about employment and so forth, and I would support that except with the proviso that we wait until things are settled.

Mr. EILBERG. That is exactly it.

Bishop DALY. But I think, again, we are dealing in symptoms, one of the sources of the problem is unemployment, and it is not just ordinary unemployment; it is unemployment brought about deliberately through political discrimination.

Mr. EILBERG. What is your opinion on how we get the President to do what you just suggested?

Bishop DALY. Well, I don't know the American political scene. That is where your line comes in. I mean, I don't know how to manipulate or lobby the President. I just don't know. That is your problem.

I do feel, though, nonetheless, the most powerful voice, the most powerful voice in the situation would be the European, and I still feel that, and I am quite interested to see the EEC get into this. If adverse opinion could be marshalled there, I think that would be the key to the problem. I think that is really where the solution really hangs, because Britain would have to respond.

Mr. EILBERG. So that if the United States, perhaps, in whatever form, through Congress, Congressional member, or Administration, could appeal to the European countries, that this might be help?

Bishop DALY. I think so. I think if America uses influence in Europe. I know that America has got enormous influence on England. Fine. But American influence alone no—most American influence is written off as seeking the Irish-American vote and dismissed here completely. It is dismissed here completely.

They will say that Carter had to say something on St. Patrick's Day to keep the Catholic Democratic vote of the big city of Chicago, Boston, New York, Philadelphia, to please Congressmen coming out for election, et cetera, to keep the Irish vote there. That is the way it is dismissed here. But a revolt of the governments, that would make them sit up. There would be no playing for the Green vote, as it were.

That would hit the spot. But the other thing that is looked upon simply as placating a few democratic Congressmen and Senators. That is certainly the way many responsible people here look at it.

Mr. EILBERG. Just so that our position is made clear as possible, I am Chairman of the Immigration Subcommittee, and one of the things we are studying is the granting of visas or what circumstances may be present, or might cause our Consulates here to deny visas. So often it is a criminal record. You look at the criminal record, the Consul takes it on the face of it as being bonafide and regular and doesn't look beyond it. This is our general complaint with our Consuls, and this is a thing that we are studying in some depth at the present time.

We have oversight over the State Department and the consular service.

Bishop DALY. Well, I think America has been very unfair to Ireland, really in cutting the quota of immigration, and I speak for the North and South in this regard.

Mr. EILBERG. Well, that occurred, of course, in '65 and you know the national origin system was unfair. It results in some other kinds of unfairness, as you have described, following '65, although to my knowledge, at the present time, there are no backlogs present.

Bishop DALY. Well, the immigration problem, from the South of Ireland, particularly, has stopped. In fact, we have got migration back again. These ties are as strong in my part of my diocese, the republic part in the north of Ireland, and there has been reversed immigration. I remember young families coming back and settling in the republic, particularly.

Mr. EILBERG. I want to get back to Monica for a moment, and you said something interesting which did not really sink in at the time. I would have assumed that the Price girls, in that relatively small community—there are only some 90 prisoners—

Bishop DALY. Only 90 prisoners?

Mr. EILBERG. What?

Bishop DALY. You said only 90 prisoners?

Mr. FISH. That is what the governor said.

Bishop DALY. I just don't know. I haven't the facts and figures, but I know certainly, I was right through the entire prison, and I would have thought that there were more. Maybe it has decreased now somewhat, but I was there about a month ago. I got the impression that there were more than that, but I wouldn't go on the record for that, but I am not sure. I would check it out. But that is a hunch, you know. There are one, two, three, four wings you know.

Mr. EILBERG. Do you think that Monica is so separated from the rest of the prison community that word would not get through as to the interest in her case?

Bishop DALY. When she is in the hospital. But when she gets over her disease she will return to the wing from time to time. There is one interesting letter I got back.

Mr. EILBERG. Other than the first one?

Bishop DALY. Yes, would you see this letter now, this is an earlier letter.

Read the early part of that second paragraph.

Mr. EILBERG. This is from Concannon, April 10, 1978, to Bishop Daly. "I must tell you that although Mrs. Craig felt concerned about her daughter, Ms. Craig has expressed her strong annoyance that inquiries are being made about her by public figures. She has in fact put in writing her objection to the giving of information about her health to any one. In the circumstances, I do not feel able to advise you of her situation. Let me tell you, however, that the medical officers at Armagh Prison have already spoken to Mrs. Craig about her daughter, and you may be assured that the prison authorities are fully aware of all aspects of Ms. Craig's health. Yours Sincerely, J. D. Concannon."

Do you think this is true?

Bishop DALY. I don't think it is true. Certainly I saw her since then and she certainly didn't express any annoyance at that time.

Mr. EILBERG. As one who is not expert in the field, have there been other substantial complaints like yours concerning Monica Craig?

Bishop DALY. Archbishop Flaigh also I think has expressed concern about her. He has visited her with me on a lot of occasions. It is in his town, in the city where he lives, so he has been into see her, I think,—Father Murray certainly has made approaches. I know her mother has made approaches. The family are not, certainly, in a big public campaign about it, but naturally they are very, very concerned about her condition, about her deteriorating condition.

But as I said, you know, you are hammering your head against a wall in this sort of thing for years, really, and you get nothing, no change.

Mr. EILBERG. And the elections are when? They are expected in early October.

Bishop DALY. The elections are expected in October. You see, Northern Ireland won't even be an issue in the British election. They don't have to worry about it, except if they do something that might get the ire of British people up.

Mr. FISH. It keeps coming up, though: Don't expect any movement until after the election, and that is because they don't want any waves in here that might have repercussions over there. It is not an issue there.

Bishop DALY. There is no issue today.

Mr. FISH. That is because there is no Irish vote in Britain?

Bishop DALY. Well, partly that, but there would be an Irish lobby and a very anti-Irish lobby. There would be two lobbies. The Irish lobby votes labor almost out of habit anyhow, or vote socialist.

Mr. EILBERG. Could you speculate with us as to how the election might go and what consequences might flow from that?

Bishop DALY. Well, I would hate to see Margaret Thatcher become Prime Minister, certainly. She is so right-winged as to be unbelievable. If Heath were in charge of the Conservative Party, I would certainly expect a great deal more because of all the senior British politicians I met over the last number of years, he was by far the one that had a good grasp of the situation here and a deep understanding and he took a deep commitment. He was the man who ended the Stormont, and that I think took a lot of guts for a British politician, and he went through with it and stuck by his decision.

Well, I don't know who is going to win. I am not a political pundit. I just don't know who is going to win, but I would hate to think what might happen if Margaret Thatcher wins and the Secretary of State for Northern Ireland—

Airey Neave of the shadow cabinet is a complete right-winger. He is as right-wing as Hitler was, nearly.

Mr. EILBERG. The situation could become even worse then.

Bishop DALY. I think the situation—I would be very frightened of what would happen with a conservative victory, yes, and they have an alliance, close alliance with the unionists here, with the loyalist groups. If the conservatives get to a situation where the loyalists can say, "Our voting block will go with you if you agree to A, B, C, and D." Then you could really have problems.

Mr. FISH. Bishop, you know, you said the problem is the British presence, and I wonder if you could help me to sustain that and to meet the counter-arguments. We met with Concannon and half a dozen of his people, and they tell us what the British policy is, to be a normalizing influence and that they are going to be here until such time as a solution is found. They would be happy to leave when there is a majority in both camps in the North that are prepared to go another way.

I mean, it is a little difficult for me as an outsider to say—well, this is, I always thought it was part of the British Isles and that you all were British. I understand now, when you say "Brits," it is not meant to reflect on oneself but on somebody less than desirable.

We are told the British, really would like to get out of here, and the British people are leaning on that side. Have you got a prescription for how this could be affected?

Bishop DALY. I think there is a short-term policy and a long-term policy to be considered. I think first of all, Britain should declare quite clearly that it has decided upon a policy that will bring about the unity of the Irish people, one; that that will be a long-term policy that will be pursued over a period of x years.

In the short-term, they would form an administration here in the existing area that is known as Northern Ireland, that is widely acceptable to both communities, and work toward building up the economy here.

But they have really, in many ways, manipulated our local politicians to the extent where there is tremendous deprivation on the western side of the province, and much less deprivation on the eastern side. I think at that point in time, some point in time, then both the Dublin government and the Westminster government could act as guarantors toward their own particular group so that they would identify with respective goals over that period of time.

But the ultimate solution for this country I have no doubt, is the reunification of the country, and I think in the United States, the people who get a much clearer picture of the situation, have looked upon our problem here as a post-colonial problem because really that is what it is. It is very similar in many ways to Rhodesia. It is possibly more difficult to identify because the color of the skin is the same.

But you have got a situation here of indigenous people, and of people who came here to settle or were here already settled and they drove those people off the land and drove them out of their jobs, and drove them to the United States, to Australia, to anywhere, as long as they didn't stay here. This is the heritage of that sort of policy and that is really the situation as we see it.

Mr. EILBERG. What is the long-term possible solution?

Bishop DALY. Well, I think the long-term one is the declaration in earnest the solution they wish to see, and that they feel the Irish problem can only be solved by the unity of the Irish people and that there is a short-term policy towards that.

I think in the event of a declaration of that nature, the loyalist would look at the situation with a degree of reality that is missing at the present time because they still have this pipedream of the unity with the rest of England, with the rest of the United Kingdom, as they call it, and until such time as that possibility is eventually ended, I think you are going to have problems here because they are not going to look at it in a realistic manner.

And another point is too that people aren't going to go on blowing up places that are literally their own. I mean, at the moment, they are wreaking havoc on their buildings, knowing the British government is going to pay for it. Well, if you have got to pay for it yourself, then it is a different ballgame.

Mr. EILBERG. Concannon told us that the level of troubles had reduced substantially over the last six or seven years, pointed to statistics, he didn't gloat over it, but he said that only seven policemen had been killed this year, whereas at one time the figure was at least two per week.

He tried to create the impression with us that things were much better.

Bishop DALY. That is fine, you see. I accept that, okay. The security situation as they see it might be better, but the British government has been pursuing a military solution for the problem here. It is not a military solution that is required; it is a political solution that is required.

Mr. EILBERG. What I am saying is, I don't think that at this time, unless something else is going on in Westminster that we don't know about, that there is any present indication that they are thinking about withdrawing.

Bishop DALY. Well, I think there is an influential lobby within Britain for withdrawing. I think the editorial in the "Daily Mirror" which is the top national newspaper of England, read by many—of the ordinary people—I would say it has the biggest circulation of four million, four and a half million per day, a Fleet Street newspaper, that circulates mainly in Labor party supporters, I did have an editorial on this. I don't know if you saw a copy of it or not?

Mr. EILBERG. No, I didn't.

Bishop DALY. It appeared recently. "Bring the troops home," was the title.

Mr. EILBERG. This was in the last few days?

Bishop DALY. Two weeks ago. That would have been unthinkable a year ago. That would be quite unthinkable even a year ago that any Fleet Street newspaper would publish an editorial of that nature. It was a front page editorial in big headlines.

Mr. CLINE. Bishop, do you believe that if the British did pull out their troops, both sides, the extremists on both sides would observe a truce?

Bishop DALY. Well, I don't think that there could be any question of an immediate pull-out, that they say today that they are pulling out tomorrow. I think there has got to be a phased pull-out over a period of time. I think if there is an immediate pull-out there could be a blood bath, yes. If there is an immediate pull-out tomorrow morning, I think that whole areas of Catholic Belfast, for example, and rural areas would be wiped out pretty quickly.

I think there has got to be a phased, gradual, orderly withdrawal over a stated period of time. I think in that situation people would have to come to the terms that they either live together or they die together. I think that the good sense of the people would prevail in that situation.

Mr. FISH. Bishop, do you think also that it is fair to say that the presence of the British Army and the patrols and doing what they are doing today in the streets and people's homes is simply perpetuating, and creating another generation of provisional IRA?

Bishop DALY. Yes, if they are determined to stay. But the IRA will disappear as soon as the British disappear.

Mr. FISH. Would you also say that it would be to the advantage of the Protestant majority in Northern Ireland to start negotiating in the very near future, while they still have the majority?

Bishop DALY. What do you mean, while they still have the majority?

Mr. FISH. Well we talked to Reverend Bill Arlow, an Anglican minister, and he was talking of the politics of the thing, and he thought that it would be just common sense for the present majority to negotiate, because the minority in a given period of time, could become a majority?

Bishop DALY. Because of the birth rate of the Catholics?

Mr. FISH. Yes. He said without any question in his mind this would happen, and then they would lose the one leverage they have now.

Bishop DALY. I don't know. The thing is, I think that could happen in 100 years or so.

For there to be a Catholic majority here, I think there is a unknown factor involved: The Catholic population has been kept down here through the deprivation of employment. They have had to go abroad to get employment. This is why I mentioned about the immigration policy of the United States.

Most doors are closed now. There is high unemployment in England; there is high unemployment in many of the traditional places they went to, and the only places really that are open are Germany, the Netherlands and Belgium, where people are going to work.

Mr. FISH. You could help a great deal because I did honestly think that the British Isles was composed of Northern Ireland just as much as Scotland and Wales, but you put another perspective on this, that this place has been occupied for some 800 years.

Bishop DALY. The whole island was occupied.

Mr. EILBERG. Colonialized?

Mr. FISH. Not part of anything?

Bishop DALY. It is a post-colonial situation. I find with journalists and others who come here, that that is possibly the most effective way of describing it because they are accustomed to that post-colonization situation in many other parts of the world. This is Britain's last colony.

Mr. FISH. And they should know how to get out gracefully, by now, shouldn't they?

Bishop DALY. Well, they got out very ungracefully in most of them, if you look at most of the countries they left. They were unstable countries; their system of control in most of the countries they were in was to create a divisive type of situation. They did that in the Indian continent between the Pakistanis and the Indians, and between the Moslems and the Hindus. As a result you have three states there now: You have Bangla Desh, India, and Pakistan. Cyprus, they have got Greek Orthodox people and Turkish. Moslems again, going at one another, and the same thing happened in many of the countries in Africa. The same problem you have got with Rhodesia and Kenya. They had people who reacted against them, and they branded them as criminals, Jomo Kenyatta, a typical example. I talked to him just last week. This has been their technique of colonization and decolonization, if you like over the years, and it is quite a shameful business.

I don't see why states outside of Britain don't understand this. I think that they are running absolutely true to form here, as they have done all along the line.

Mr. EILBERG. Father Faul told us this afternoon that some of the reasons why they are holding on include the strategic position of Northern Ireland, from a military point of view, and also the domination of business, banks, and insurance companies, and so on. Do you agree with that?

Bishop DALY. I admire Father Faul a lot. I think he has done remarkable work for human rights, but I don't particularly agree with him on that. I think if that were so, banks and so forth, you know, that they have as much clout economically in the South of Ireland as they have in the North, possibly more. I don't think their departure would end their dominance in that sense.

On the defense point, I think it would be very difficult for a United Ireland, for a United independent country here to remain neutral. It would be very difficult for an independent Ireland to remain out of NATO. I think they would almost pressure Ireland to get into NATO because it is a strategic position.

The South of Ireland has stayed out of NATO for two reasons: One, because of the drain it would be on the economy to have an armed service to the extent that NATO would require, and, two, I think as a protest against the British occupation of the northern part of the country.

Mr. FISH. Do you mean that if by the Republic joining NATO, recognizing and honoring the member nations borders, that would be the recognition of the border here?

Bishop DALY. I think beside the political reason for the Republic not joining NATO there is also an economic one. It is a small country, it is a developing country. It is beginning to rule life very effectively. It has got the fastest growing economy in Western Europe at the present time.

But I think to take on the responsibility of providing armed services to the extent that NATO would require is just unthinkable. I think in a situation like a United Ireland, say, within the foreseeable future, as long as Eastern Bloc countries would maintain the position that they are presently maintaining, there would be enormous pressures on the United Ireland to become part of NATO, and possibly they would in that situation with a great deal of support, say, from the United States and others in professional technique and otherwise.

Mr. EILBERG. What reasons then are there, in your opinion, for the British to hold on?

Bishop DALY. I honestly don't know. I just don't know. It has been completely irrational and unreasonable. I think perhaps there may be a political reason from the point of view that there is a block of votes here which will go to a party that is sympathetic in Westminster. You have a polarization situation existing in Westminster that in the foreseeable future it is always going to be very close between the conservatives and labor.

Whoever courts the votes of the 12, of the 10 units of Northern Ireland, possibly they will, to a large extent, have the balance of power in Westminster. They would be useful votes to have.

Mr. EILBERG. The argument has been made the other way, though, that just 12 or 13 votes may be totally insignificant.

Bishop DALY. They are not insignificant in a hung Parliament, you know, in a Parliament where the majority is so small or where there is no majority at all, as is the case at the moment. That is the only logical reason I can find for their insistence on staying. I mean, I think anyone who works in rational, I guess politics doesn't always work rationally, there is no reason for them staying here.

But other people put economic reasons forward. They say it is cheaper. The British Army would have to maintain an Army of a certain size anyway for NATO. It is cheaper to have 14,000 of them here than 14,000 in West Germany paying for them in deutschmarks, which would be a drain on sterling. People have said that. Whether that is true or not I just don't know.

Mr. EILBERG. How about the cheap food policy?

Bishop DALY. Well, I don't know. Within the FEC food is pretty well standardized. It doesn't matter where you get your food from within the EEC even within your own country. It is going to cost you the same.

Mr. FISH. So they can't very well turn around and tell us, "Why should we get out? It is ours."

Bishop DALY. It is not theirs. It is not theirs. I think on the immigration issue, you know on your particular issue, I do feel that there could be greater liberalism shown, I think, to Irish people.

Mr. FISH. Yes, I understand from the North of Ireland there is something like 250 immigration visas. Now, in 1951, '2, and '3, when I was the visa issuing officer in Dublin, I issued about 400 immigration visas a month, 4,000 immigration visas a year, and only about a third as many nonimmigrant, visitors visas. Well, now it is switched around. There is very little opportunity for people to get immigration visas.

Mr. CLINE. There is no backlog. The problem in getting a permanent resident visa is the labor certification, and unfortunately the people who are attempting to apply are unskilled and cannot qualify for labor certification.

Mr. FISH. In an answer larger than a simple no, do you think that the British understand the Irish?

Bishop DALY. I don't think anybody, first of all, understands the British. I can't understand them. I think we are a very complex people, the Irish are. We are difficult to understand. There are times in the Northern Ireland situation here that I have lived in the middle of and it baffles me from time to time. So, it is truly one of the real enigmas, I think.

Mr. EILBERG. Bishop, thank you.

Bishop DALY. You are very welcome.

CHAPTER XVI. PRESS CONFERENCE BY THE DELEGATION UPON DEPARTURE FROM BELFAST

On September 1, 1978, prior to the departure for Dublin, the delegation met with representatives of the Northern Ireland press to convey its impressions and views obtained during the four day visit to Northern Ireland.

The transcript of the press conference which follows is somewhat incomplete as to questions by and the identities of the reporters in attendance.

It does, however, summarize the impressions and observations of the delegation.

Mr. EILBERG. The opinions that we are about to express are to be considered impressions at this point because we haven't had the opportunity to digest the great amount of material that we have. But, we want to give you some ideas of what our thoughts are following four days of intense activity.

The chairman of our full committee, the House Judiciary Committee, Peter Rodino of New Jersey, asked Mr. Fish and myself to visit Ireland for the purpose of studying the consular function of issuing visas. Complaints had been received that many persons, many Irish people, had been denied the opportunity to visit the United States or immigrate to the United States because of criminal records. The authorities had used their discretion and our consuls have very often turned applications down on less than substantive information.

We have studied some of the cases where visas have been denied. We find in some cases that our own consular people have received the transcript of the criminal record and that in itself the record had served to deny the applicant the opportunity to visit or immigrate to the United States.

We have seen some of these criminal records. The examination of these records led us into the criminal justice system. We have a great many observations about the criminal justice system. These will not necessarily be in the order of arrest, detention, trial, conviction, imprisonment, but we have observations on all of these items.

First, I particularly want to call your attention, if I do anything at all, to the case of Monica Craig. Monica Craig is in Armagh Jail. We have visited Armagh Jail. We did not see Monica Craig, but we have heard a good deal about her from not only prisoners, but also persons outside of the jail. We discussed her case in some detail with Father Denis Faul. She is suffering from anorexia nervosa a condition which was brought about by her imprisonment. She was convicted in very doubtful circumstances in my opinion. And she has been in jail for better than a year and a half with a seven year sentence.

The girl has lost weight. I think she was somewhere around 140 and she is down to about 75 pounds now. We have been assured by all concerned that she is receiving medical attention in the prison. We are not complaining about the treatment that she is receiving in the prison. She does receive daily visits from a Dr. Cole. It seems to us, however, that her condition is one that cannot be treated by the medical attention that she is now getting. We are very concerned that this girl may be dying as her weight gradually decreases.

We would like to convey the idea that this girl should be given the royal prerogative of mercy because if her condition continues there is no doubt in my mind that her health will rapidly deteriorate further and that she will die.

Now, I am going to mention a number of other areas and then ask Mr. Fish to make a statement.

I believe that there should be some form of special status for those convicted of politically motivated crimes. If such a status were established this would end the deplorable conditions in H Block at Long Kesh, the Maze. I might say that we made several requests to visit Long Kesh, the H Block. One request was forwarded before our departure by the British Ambassador to the United States. Another request I personally made to Minister Concannon. All of our requests were refused. Minister Concannon upon refusing our request gave us sets of about a dozen photographs, which supposedly represented conditions, cells, classrooms, et cetera in the H Blocks.

If conditions were as represented in the photographs and in the accompanying descriptive materials that he gave us, there would be no problem in the H Block. It is just absolutely obvious that what we were shown does not represent conditions of those persons who are living on the blanket in the Maze.

We are very concerned about the Diplock courts. We, in the United States, have the jury system. While some people here have said that the jury system has its problems, certainly the Diplock court with a single judge in my opinion offers far more danger to individuals and to human rights. I might note that we are disturbed by the allegations that so many people have been brutalized by the police. We were told that no complaints that have been made against the police have been acted upon in terms of action being taken against the police themselves.

I might add that complaints against the Army have gone unresolved. We were seriously concerned with the—seven-day detention law. During that period so often the police, plain clothesmen, harass and maltreat prisoners. This is certainly very undesirable. I say to you that the Draconian laws here contribute to the general deterioration of human rights.

I must confess that I am disappointed that our own President has taken a position that the parties involved in Northern Ireland should settle their political problems and then the United States will offer some industrial opportunities that will lead to the creation of jobs in Ireland. I think that our Administration should be interested in human rights here and now, as it is in so many other parts of the world.

We want to commend, particularly, Dr. Denis Faul for his efforts to restore human rights. We question the guilt of many of the persons convicted. A substantial reason for this doubt is the Amnesty International Report pointing out that a great many convictions are obtained by coerced confessions and no witnesses.

It may well be, as some people say, that the parties in Northern Ireland may be unable themselves to work out their problems leading to a peaceful solution and the establishment of human rights. We have heard everywhere persons requesting that the British withdraw from Northern Ireland.

I would just like to give you an idea of some of the persons and organizations that we have visited with. Sometimes a member of the party would see an individual or group and this is not a complete list, but it will give you some idea of the persons that we met with.

We have met with representatives of the Provisional Republican movement; we met with the Ulster Independence Association and that suggests in itself, these two, that we were examining all sides of the religious and, as you will see shortly, the political spectrum; we met with the UDA; the Irish Independence Party; the official Unionist Party; the Orange Order; the Association for Legal Justice; Relatives Action Committee; the British Northern Ireland Office; the Irish Council of Churches; SDLP; IRSP; attorneys for prisoners; a former prisoner on the blanket in H Block; the Bishop of Derry, Bishop Daly; Father Denis Faul; and others. Forgive me for making such a long opening statement, but that is the outline.

Mr. FISH. Thank you, Mr. Chairman. Ladies and gentlemen, it has been alluded to that we came here on a specific assignment of a subcommittee of the House Committee on the Judiciary. We are one of seven subcommittees, although many of us serve on more than one.

What our mission led us into, interestingly, was the jurisdiction of our full committee, because our committee has the jurisdiction over the Department of Justice in the United States which involves the Federal law enforcement apparatus, the FBI, the Federal penal system, the Federal criminal code, and, of course, our prisons. Matters that we are quite familiar with we got involved with here

and as the chairman has said, we saw a very wide spectrum of people in the four days and five working evenings that we have been here.

My impressions are that right across the board with some few exceptions we met men and women of good will who are committed to working together for the future. I think one matter of great importance to me personally in this exposure is just the fact of sitting down and talking at some length and getting to know people who are very active and have great concern for the future of Northern Ireland. I look forward to keeping up these contacts.

So, I guess for me and I am sure for Mr. Eilberg, our visit has been the start of a journey, the beginning of a deep concern and today is not just the end of the trip. I am leaving with the sense that there is a growing realization in Northern Ireland of the need to work together towards the goal of a political resolution.

As an American, I had to concentrate on two issues: one is the role of the United States. It is not entirely clear, but it is a word that kept reoccurring, words like "referee," "guarantor," "honest broker." I didn't expect to have a blueprint of exactly what is expected of us, but in the cycle that engulfs this land people have expressed the hope that there is a point where we can break the cycle.

There are expressions of concern about the immediate economic needs of Northern Ireland to which the United States could address itself now, not following a political resolution.

In short, I guess that I come away with a conviction that the United States must play a role. We cannot remain in our present posture which is one of being absolutely dead in the water. Now, aside from this, and aside from the political issue, there is an immediate issue that can't await the political resolution and that is the question of human rights to which the chairman referred.

There is a need now for the initiative to stop the violence. The message I will take home is that my country must speak out against violence, equally condemning the violence of the Provisional IRA, the violence portrayed in the Amnesty International Report and the violence of the British Army.

QUESTION. I would like to ask Congressman Fish, you made the statement on television the other night that you did not think that Americans were aware of the situation in Northern Ireland and you spoke of some parts of the city of Belfast reminding you of an armed camp.

MR. FISH. It was worse than Saigon in 1968, when I was there. It was much more visible here, yet they were people engaged in a war in Vietnam.

QUESTION. Why do you think Americans do not realize what the situation is?

MR. FISH. I honestly don't know, but I just have to speak as one who is presumably more aware of situations, reads more closely than most because of the nature of my job, and it wasn't that apparent to me. Now, this may not be so as to Irish-Americans who read papers that are particularly written in several large metropolitan centers with a view towards the Irish-American audience. But the average American does not. I don't think the situation has been portrayed as vividly as I would have expected.

[A question regarding the kind of statement the President should issue.]

MR. FISH. Well, I think a clear statement. You know, our President has—and I applaud it—has put the United States in a moral position in the world in terms of our concern for human rights and I think that this is a moral issue, but I also think that you can't be selective. I have heard expressions of condemnation for the violence of the Provisional IRA. I have never heard an expression of concern over the violence of the British Army. I think it is incumbent on us to be entirely even-handed here and to speak in terms that we cannot tolerate any form of violence whether it is the form as portrayed, as I said, by Amnesty International, the violence in prisons, the violence of the Army patrols.

I also, in the economic field, I think this is something that we can explore here, that we didn't really get a chance to get into enough depth here and I propose to do so myself when I get home of the economic problems here and the unemployment rate. I think that these are matters the President addressed a year ago. He spoke to it in terms of the United States' assistance along with others in the economic field following a political resolution. I think we have got it just the reverse. I think that our help now in the short run need for economic assistance in this country would be a help toward the long-term goal.

[A question regarding political prisoners in the United States.]

Mr. EILBERG. When you say the political status for prisoners at home, there have been some minorities that claim that they have been railroaded through our criminal justice system.

I am not convinced that is so. It happens that I am a lawyer, I have prosecuted cases, I have defended cases, I am on the Judiciary Committee and even though Ambassador Young has made the statement that there are large numbers of political prisoners in the United States. I reject that kind of thinking. I cannot say that every trial or every conviction or every single case there has been due process. I think that the position stated by Ambassador Young as to the conditions in the United States in the criminal justice system are exaggerated.

QUESTION. So therefore, you wouldn't support special status for political prisoners in the United States?

Mr. EILBERG. If there are political prisoners in the United States and, again, I am not convinced that there are, I would support special status for political prisoners in the United States.

QUESTION. What is your view of the British argument that conditions in the prisons are self-imposed?

Mr. EILBERG. These people have been railroaded through forced confessions and through one-man courts. They have reacted to conditions under which they are living here. The presence of the British, the Army, tend to exacerbate their lack of peaceful living. What I am saying, the prisoners in H Block can be regarded as political prisoners given the conditions. Certainly most of them would not be prisoners in the ordinary circumstances. They have no other way of protesting so somebody would listen that there would be a possibility of changing the system.

Mr. FISH. If I could enter just a minute. You see, I think what concerns us is that it doesn't seem to be that easy. We hear from very respectable members of the establishment that these people are guilty, that those who go through the court system here are undeniably guilty and then we talk to extremely respectable people like Bishop Daly and other members of the clergy that we have had a chance to talk to who have been in Long Kesh who actually gave us the names of people who they are absolutely firmly convinced are innocent. Where does that leave an observer?

Certainly, in a posture of questioning and then we have the Amnesty International Report which in my judgment has not been satisfactorily addressed in terms of the treatment. Granted, it dealt with a great many people who did not proceed further with the questioning through the criminal justice system, but it gives evidence that things are not right, and credence to the widely felt belief that a lot of these people are not guilty of the crimes which resulted in their sentences.

I forget who it was that I put the question to about the state of the condition of the prisons and we got mixed reaction as to cause, as to whether it was a prisoner demonstration or a result of people in the official capacity in the prison.

I did say to Minister Concannon that this issue has become a terribly important symbolic issue, just the term H Block in the United States and that if, indeed, it was not portrayed, if, indeed, there is not the torture going on that is portrayed, that it would well serve the interests of Great Britain to avoid the strain on its relations with the United States by opening it up not to every single Congressman that comes along or every nosey person, but the press, the world press. Let them come in and see for themselves what the conditions are and report it the way it is and put to rest this conflict of testimony.

[Question regarding whether this suggestion was brought to the attention of Minister Concannon.]

He had a meeting with the Japanese Ambassador and left the room, but he was about to leave anyway when I made the suggestion. I made it in all sincerity as a member of Congress talking to a member of Parliament that I would think—and being of English ancestry myself and very devoted to our close relations and conscious of our heritage and the system of justice, really it was the British that gave the English-speaking world the ability to search for truth in justice this is all being hurt at this point.

Mr. EILBERG. I would just like to add that we had the opportunity to go through Turf Lodge in Ballmurphy and the place is like a battlefield. I feel very sorry for the people who live there, for the children who are growing up there. I can easily understand the resentment that develops in people that have to live there

and I am afraid that because of that kind of civil strife that is taking place there the new generations of people are developing very bitter—outlooks who will not be well oriented to improve things very much. The civil strife simply has to stop.

Question. Do you believe that President Carter's reluctance to become involved in Northern Ireland is accounted for by America's so-called special relations with Great Britain? Does the special relationship hold him back from perhaps speaking out on Northern Ireland whereas he would not be reluctant to speak out on Chile?

Mr. FISH. That is a tentative conclusion on my part. I think it is only part of the story though because why haven't we heard from any others in the United States government, very prominent men of Irish extraction, who have not addressed this issue as firmly as they should.

But it is something that I have got to explore. What you said is a big ingredient here in my judgment.

CHAPTER XVII. MEETING WITH MR. DOUWE KORFF, AMNESTY INTERNATIONAL

On September 4, 1978, staff members accompanying the delegation met with Mr. Douwe Korff, from the Research Department (Europe) of Amnesty International at the International Secretariat's Office of the organization at 10 Southhampton Street, London.

Mr. Korff had become aware of the delegation's visit to Northern Ireland and had telephoned Belfast several times expressing the hope that he could meet with the delegation. The meeting in London was then arranged.

Of particular interest in the interview with Mr. Korff is that the British inquiry of the allegations in the Amnesty International report are in fact not being investigated as it was reported. The meeting with Bishop Daly also brought out this point.

It should also be noted that the Department of State letter dated December 15, 1978 in reply to the delegation's second letter to the President refers to this inquiry as a positive step in dealing with the human rights issue in Northern Ireland.

Excerpts of a transcript made of a taped recording of the interview with Mr. Korff follows:

MR. CLINE. This is the fourth of September, 1978, London, interview with Mr. Douwe Korff of Amnesty International.

MR. KORFF. I would like to set out before anything else or state in the beginning that the Law of Arrest and the Law of Detention—particularly in Northern Ireland but one could apply that to England as well—is inadequate in a lot of respects. And those inadequacies show much more pronounced in a situation like Northern Ireland than they would normally. There is a large debate going on. There is a Royal Commission on Criminal Procedure looking into this particular thing. Lord Shackleton has just published this report on the operation of the Prevention of Terrorism Act throughout the United Kingdom.

MR. CLINE. What is the capacity of Lord Shackleton?

MR. KORFF. He is a Lord Justice. He was appointed to call this inquiry which took him about six months I would say. He published very recently and he upheld, in particular—I haven't studied the report in great detail yet because we only got it late last week—but the disturbing thing is that he upheld the right of the police to arrest without stating the particular fact for which people are arrested, which is a possible interpretation of the law but not the interpretation that I would prefer to give.

Arresting powers in England which are the same as in Northern Ireland for common law, state very specifically, the Act of Christy and Leshinsky, 1947, that the arresting officer has to state the particular act for which he arrests a particular person so that that person can challenge the validity of the arrest. And that reason is fundamental to the whole Human Rights issue as to whether or not you can defend yourself against an arrest.

It was held in Meckledorf that when the army used similar powers of arrest without giving the particular fact that, although there was an emergency law in operation in Northern Ireland, they still have not changed the common law essentials for a valid arrest. So Christy and Leshinsky according to that inter-

pretation would still seem to apply; although now they do not apply any longer to arrests made by the army. They certainly, in my interpretation, remain to be applicable to arrests made by the police whose powers imply that the police only has to state, "I arrest you on suspicion of being involved in terrorism" without giving any particular detail. He even states that they can arrest people without suspecting them of any particular act of terrorism, just on a general suspicion of involvement of terrorism.

I think that is a dangerous right to give to any police force, in particular, if you couple it with the law on detention. First of all the police have given very, very wide powers to detain people for 48 hours or 72 hours depending under what act they make the arrest, which is often, by the way, not stated to the person that they arrest. They just state, "I arrest you on suspicion of involvement in terrorist activities."

These powers, the powers of arrest are extended. The powers of detention are extended. And then, of course, the rules governing interrogation of suspects become very important.

Again, in Northern Ireland, as in England and Wales, there are no statutory or binding rules on the police as to how they go about questioning people. The only rules in existence are called the Judge's Rules. The Judge's rules are no rules of law and state specifically—hold on I will get you the quote—that "these rules do not control or in any way initiate or supervise police activities or conduct." The only thing that Judge's Rules do is elaborate on the common law rule stating that no statement is admissible in evidence unless, it has been made voluntarily, which is rather vague.

The Judge's Rules, then, elaborate a lot of principles setting about if a police officer conducts an inquiry according to these lines, it is most likely that any statement he gets will be admissible in evidence. But it is very clear that if the police act contrary to the Judge's Rules that does not mean that a statement is not admissible. The other is also possible. It may be possible that a statement is excluded, even though no particular act against the Judge's Rules has been performed.

So the Judge's Rules are a very weak and certainly a non-binding set of rules. In particular they state another thing that we found to be a major importance. It says "Every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor" and then goes on "This is even so if he is in custody provided that in such a case no unreasonable delay or hindrance is caused by the process of investigation or the administration of justice by his doing so, and the discretion is left to the investigating officer."

Now, we found that in Northern Ireland, no suspect ever has access to a solicitor, never. And I think one could apply the same to people arrested under the emergency legislation in England and Wales. They never see a solicitor, absolutely never. And it is always said that is because that would cause delay or hindrance to the process of investigation.

Again, in my opinion, and it seems to be the Amnesty International opinion, the pure fact that a person is less likely to make a statement if he sees a solicitor cannot be given as a reason for denying access. But if one looks at Lord Shackleton in paragraph 92 of his report, he states "Well, giving access to a solicitor may cause hindrance if only because a solicitor may take out information to the terrorist gang with which the particular suspect is suspected of being involved." And then the point, and I think this is very deceiving—although I don't want that word called it, that is certainly my opinion—Shackleton points to the experience in Germany and Italy where it has been shown that certain lawyers cannot be trusted. I am not disputing that fact.

But one thing that is particularly important is that both in Germany and in Italy no statement that you didn't make in the presence of your solicitor to the police is admissible in evidence in those particular circumstances.

It is rather complicated. In Germany only, if you dispute having made a confession to the police in a trial, then such a confession is only admissible if you made it in the presence of a Judge, the investigating Judge, that is, not to the police. A confession made to the police you can withdraw at any stage and it is then not allowed in evidence.

In Italy, the presence of a solicitor during any part of questioning is obligatory. That has just recently been changed in a sense that under the emergency

legislation at least, now, has the right in very urgent cases to question the people outside the presence of their solicitor. But then nothing that comes up during that inquiry can ever be used in evidence. So the situation—the reference to Italy and Germany is very misleading.

Secondly, and I think is also very important, nobody in Northern Ireland has ever proved that solicitors have been able to pass along information. And even if that was the case, it is impossible to show why, even if that might be so far some solicitors, no solicitor, whatsoever, whatever his reputation is ever to see any client no matter what he is being questioned about. I don't think there are any good reasons for denying people access to a solicitor. I think it is a fundamental right of any suspect, in particular, if he can be held for seven days.

If you can be held for seven days, of course, you are held completely incomunicado. The family is often certainly not allowed to see you. It is difficult to get a doctor from outside in. And we have found that a relatively large number of people have been maltreated while in police custody. We have shown the complaints procedures about that to be insufficient, in that the only thing that is being investigated is whether or not there is sufficient evidence to prosecute an individual policeman for assault.

Now, even if the inquiry shows that the person has been maltreated while in police detention, it is very difficult to find sufficient evidence to point to one individual policeman because there may be three policemen present during an inquiry. The suspect has no way to corroborate his story that it was policeman A, rather than policeman B or C, that did the beating up.

So it is virtually impossible ever to collect enough evidence to start a prosecution against an individual policeman. And if there is not enough evidence for that, all these cases are classified as unsubstantiated, even though it may have been proved that the maltreatment, in fact, took place.

There are files on this. There is an RUC Complaints Branch, a special branch, looking into these details, who in private would admit that they enter a role of silence as soon as they start investigating an assault case. The police officers have, of course, the right to refuse to answer questions and they use that right.

We think that it is vitally important that the files on these complaints should be examined by independent inquiry.

Mr. CLINE. Well, when Amnesty International made an inquiry into the alleged maltreatment of the individuals in Northern Ireland, were your investigators given free access to the entire files?

Mr. KORFF. Not at all, this was a particular area that we could not touch upon. We were told that this could touch individual cases that might still be under proceedings say, and we were completely denied access to the complaints files handed over by the RUC Complaints Branch to the Director of Public Prosecutions; and we were denied access to the police doctor's reports.

In our report we have consistently pointed out that it is very valuable to see those police doctor's reports, which, again, nobody has seen. And secondly that, and that is vitally important, that somebody and an impartial person—meaning not the DPP himself, he has already looked into it—an impartial inquiry should have access to the complaints file. And the inquiry just set up by the British Government has specifically excluded from access to, again, these sources.

Mr. CLINE. So that you would say that any inquiry by the British Government has white-washed the actual facts in the case and no outside, independent, objective organization or group has had access to these files.

Mr. KORFF. We can't say anything about white-wash, we are just saying that so far there has been no inquiry into individual cases whatsoever.

Mr. REGIS. There is an inquiry going on now, isn't there?

Mr. KORFF. That is an inquiry that is not looking into individual cases.

Mr. REGIS. What is it looking into?

Mr. KORFF. It is only looking into procedure for questioning suspects and into the complaints procedure. So it is a purely technical inquiry, not at all looking into individual cases and completely excluded from any access to the relevant files.

Mr. REGIS. But this Board of Inquiry was set up after your Amnesty Report and that was supposed to be in answer to your Amnesty International Report.

Mr. KORFF. Well, we consider it a very inadequate answer. We think there

should be a full inquiry into all the allegations. And that is the only way to find out to what extent this took place and to see to what can be done in order to mend it. We think that no Committee of Inquiry can make recommendations about the procedure of investigation and interrogation if they cannot investigate individual cases or much less maltreatment.

So we are not at all happy with this inquiry and we set out in our press releases in great detail where we think this is not the kind of inquiry that we want.

Mr. REGIS. Were your people allowed access to Long Kesh?

Mr. KORFF. No, we were not allowed access to Long Kesh. It is a different issue. We asked that a body of international repute should have access to Long Kesh and we got a letter saying that we certainly would not get access to Long Kesh.

Mr. CLINE. Was that from Mr. Roy Mason?

Mr. KORFF. Yes, sir, it was.

Mr. REGIS. Could you give us some of your ideas of Long Kesh?

Mr. KORFF. I think not at this stage, really. We are in touch with the Government over it and we are concerned about the situation there.

Very briefly I think I could say that we think that it is the obligation of the Government to see to it that the health of prisoners is not impaired. And that we think that no matter what prisoners do, measures taken—and whether you call them not having access to or whether you call it punishment, is not really very important in that respect—we think those measures should not go so far as to endanger the health of prisoners.

Mr. REGIS. What do you think of their protest for special category status?

Mr. KORFF. Amnesty does not support special category status in any case, not for prisoners of conscience anywhere in the world, not for political prisoners, not for anybody. So that particular issue we are very clear on, we do not support special category status. It is just outside our mandate.

Mr. REGIS. In other words, these political prisoners are being tried under criminal laws and in your estimation that is what should be done. It is only the procedures of interrogation, arrest interrogation and trial that you are complaining about.

Mr. KORFF. No, I think we go beyond that. First of all—well, I explained our objections towards powers of arrest and detention and the rules for interrogation and complaints procedure. This would be seen in the light of the fact that people are brought to a special criminal court which is a non-jury court and the operation of which has caused considerable concern in Great Britain and of no account, particularly in the United Kingdom.

We have pointed out with very great concern the fact that more than three-quarters of the cases brought to these courts are based solely, or almost solely, on a confession alleged to have been made to the police. We think it is a very bad system and we have to rely completely on confessions.

And if we go into the prisons, well, we don't just say, okay, if somebody has been convicted he should be in a humane regime. And I think you all have noticed during your inquiries that besides the punishments imposed on the people that demand special category status, there are also restrictions in the sense that, and persons refusing to wear a prison uniform, have no access to all kind of facilities, like outdoor training, outdoor exercise, training, library, et cetera. Those things are not imposed as punishments, but are made conditional on the wearing of the uniform which is at the beginning of the whole issue anyway.

We think there is a possibility there for more leniency.

Mr. CLINE. I couldn't help but think that it was rather unusual that of the cases brought to trial, there were 94 percent conviction. This seems to be an unusually high conviction record. Would you comment on this, please?

Mr. KORFF. I think it is very high. I think it is very, very high. But more than that I think the fact that such a high proportion of that very high proportion is based completely on confessions is very disturbing.

Mr. CLINE. We were advised by the Lord Chief Justice that many of the people just volunteer to confess. They are very happy to get it off their chests, so to speak.

Mr. KORFF. This is rather difficult to see, that on the one hand, people are not allowed to have a solicitor at all and have to be kept incommunicado—

Mr. CLINE. So most of these confessions are made without the benefit of having a solicitor.

Mr. KORFF. All of them.

Mr. CLINE. All of them.

Mr. KORFF. Literally all of them.

Mr. REGIS. In some trials when an officer is questioned and he asked for privilege that be granted to him there is no way to refute any of his statements.

Mr. KORFF. That, of course, is an example of the courts. We have noticed in general that in emergency situations everywhere, not just the law changes, even within the limits of the law the use of discretion by judges, by police officers, changes. And you will certainly notice that kind of thing in the special court, certainly when a policeman asks for a privilege.

There was one case in the Irish Republic where they also have special courts where there was somebody who alleged that he has been beaten up. He was standing trial with two other people who did not allege to have been beaten up. There was some evidence that he had bruises on his face. On the photographs taken by the police, only the photograph of this suspect was taken without a flashbulb and was very unclear.

It also showed from the numbers on the photographs that five photographs were missing. When the police officer involved was questioned on it, he claimed privilege as the procedure of photographs were taken and this was accepted by the Judge.

I think that kind of use of discretion shows very clearly what I just said, practice will change.

Mr. CLINE. You mentioned just now the Republic in Southern Ireland, I was somewhat surprised to hear allegations made by some British authorities and others that there is a violation of human rights in the Republic of Ireland.

Mr. KORFF. We brought out a report about a year ago, almost a year ago now, about brutality by the Irish police to its suspects and, again, more or less the same issues. People suspected of involvement in terrorist activities.

Mr. REGIS. What would you replace in order to meet your human rights standards? In what way would you replace the one, the special inquiry court and the one judge decisions and all that, what would you recommend on that?

Mr. KORFF. It is very difficult for me to say anything on that right now. I think that is a very complex issue. I think what we need is a monitoring of the whole system on a much more continuing scale than anything that has been undertaken so far. I hope that academics will be able to do that because Amnesty does not have the resources that sort of follow the operation of courts from one day to the other. But we are very concerned about the operation of the courts.

Mr. CLINE. Is there concern here in London and in the Government about the treatment in North Ireland?

Mr. KORFF. That is difficult. I think the government—well, it was pointed out to us that in order to maintain the security stated, to maintain the situation in Northern Ireland, in especially retaining the confidence of the Roman Catholics into the police force, it would have to be seen that there are convictions. If the police cannot get convictions, confidence in the police will drop. And if confidence in the police drops there is always a new outburst of violence, in particular of sectarian killings. So there is a very great pressure on the police to show that they are handling terrorism, that they can cope with terrorism.

I think, at this point, it looks that sometimes the Government is more interested in dealing with "terrorism" than in protecting civil liberties.

Mr. CLINE. Well, the comments have been made during our visit in Northern Ireland that Westminster Government really doesn't understand the problem and refuses to try to learn what it is all about.

Mr. KORFF. I think the problem is difficult for any country. It is always difficult to find a compromise in the dilemma of fighting terrorism which is often pretty gruesome, on the one hand, and protecting civil liberties. I think the balance in Northern Ireland has not been struck right.

Mr. CLINE. Now the report from Amnesty International had a great impact around the world, particularly in the United States and I guess in England. The Government here has attempted to discredit the content of the report. What should the next step be?

Mr. KORFF. We are still very much urging that an independent body should look into all allegations of maltreatment. I don't think that it is very sincere of the British Government, on the one hand, to reject our report, and state that we didn't have enough material to look at when they themselves denied us access to the

most vital material. Set up a committee that is specifically not looking into the most vital material. There is, in our own files, plenty of material that can either prove or disprove our case. We are completely satisfied that people are being maltreated in Northern Ireland. We are certain about it. The extent to which, of course, we cannot say from our sample. But if the Government wants to refute that, why do they prevent anybody from looking into the most relevant files that there are.

Mr. CLINE. Are you in a position at this time to suggest an independent body that could conduct an examination?

Mr. KOFF. Well, it could be a Government appointed inquiry and we could even imagine that committee sitting, to some extent, in camera on the security issue in Northern Ireland, as we have set out in some detail in our press statement. Of course, the composition of any such inquiry should be such as to command respect at all sides of the community in Northern Ireland. And the committee that is sitting now is certainly not the committee we have been asking for.

Mr. CLINE. Thank you very much, sir.

CHAPTER XVIII

EXCHANGE OF CORRESPONDENCE BETWEEN THE DELEGATION AND THE PRESIDENT OF THE UNITED STATES

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
AND INTERNATIONAL LAW OF THE
COMMITTEE ON THE JUDICIARY,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., September 13, 1978.

The PRESIDENT,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: Having recently returned from a visit to Northern Ireland, we felt obligated to bring to your attention certain observations on U.S. policy towards this area which deeply concern us.

Our observations are based on in-depth interviews with and written materials supplied by citizens from both confessional sides, lawyers, clergymen, U.K. government officials, Catholic and Protestant paramilitary leaders, and political party leaders.

We came away convinced that the United States could assume a very significant role in resolving the problems that have plagued the six counties of Northern Ireland for centuries.

We believe that the events in the last ten years which have led to bloodshed, terrorism, and suppression of human rights make it necessary for the United States to act promptly to prevent the continuation of this unstable situation.

With very few exceptions, we were told that the United States is the only country which could take a neutral position as an "honest broker" or guarantor to bring all factions together, i.e. the Government of the United Kingdom, the Government of the Irish Republic, and the Protestant and Catholic factions within the area, to devise an equitable peaceful political solution.

We are of the opinion that a political solution cannot be achieved in the near future without the United States acting as a catalyst by extending its good offices to all parties.

We make this observation fully cognizant of your statement urging peace in Northern Ireland on August 30, 1977.

We also feel it our duty to bring to your attention reports of serious violations of human rights being experienced by the people of Northern Ireland.

The Northern Ireland (Emergency Provision) Act of 1973 and its various subsequent amendments enacted by the British Parliament have greatly eroded the basic common law principle of due process. The people of Northern Ireland are being subjected to warrantless searches and arrests, prolonged detention without charges, harsh interrogation methods, and non-jury trials in which a single judge sits alone imposing long-term sentences.

Frankly, Mr. President, we were appalled at these conditions and by the "armed camp" atmosphere we encountered.

We firmly believe the entire situation in Northern Ireland warrants the immediate attention of our government.

We would sincerely welcome the opportunity to elaborate on our findings to you at your convenience.

Sincerely,

JOSHUA EILBERG,
Chairman.

HAMILTON FISH, Jr.,
Ranking Member.

THE WHITE HOUSE,
Washington, September 28, 1978.

Hon. HAMILTON FISH, Jr.,
U.S. House of Representatives, Washington, D.C.

DEAR CONGRESSMAN FISH: The President asked me to acknowledge his receipt of your letter of September 13 suggesting that the United States could assume a significant role in resolving the problems in Northern Ireland.

The President appreciates your concern and your comments on this. He has asked me to share your letter with several of his advisers so that they might be aware of your views. You should receive a further response shortly.

Sincerely,

FRANK MOORE,
*Assistant to the President
for Congressional Liaison.*

DEPARTMENT OF STATE,
Washington, D.C., October 5, 1978.

Hon. JOSHUA EILBERG,
House of Representatives, Washington, D.C.

DEAR MR. EILBERG: The letter of September 13 from you and Congressman Fish to President Carter concerning the situation in Northern Ireland has been referred to me for reply. It was kind of you to write to express your observations on your recent trip.

Your concern about the continuing conflict and violence in Northern Ireland is shared by the Administration.

I know that you are familiar with the President's statement of August 30, 1977, which does provide for American involvement in a settlement to the extent that, if a peaceful solution were achieved, the US Government would be prepared to join with others to see how additional job-creating investment could be encouraged. This Presidential statement on Northern Ireland was applauded by both the British and Irish governments as well as by those individuals and groups in Northern Ireland committed to a peaceful settlement of their disputes.

The President's statement makes clear that we wholeheartedly support the peaceful search for a just solution that involves both parts of the community of Northern Ireland, protects human rights and guarantees freedom from discrimination. US Government policy on the Northern Ireland issue has been and remains impartial. We believe

that the only permanent solution to the problem of Northern Ireland will come from the people who live there. We remain in close touch with the principal political parties in the area, as well as with the governments of Great Britain and Ireland.

With regard to your desire to discuss your findings further, Matthew Nimetz, Counselor of the Department of State, would be most happy to meet with you.

I am sending this same reply to Congressman Fish.

Sincerely,

DOUGLAS J. BENNET, Jr.,
*Assistant Secretary for
 Congressional Relations.*

SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
 AND INTERNATIONAL LAW OF THE
 COMMITTEE ON THE JUDICIARY,
 U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., October 17, 1978.

The PRESIDENT,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: We are indeed disappointed in the response furnished us by the Department of State to our letter to you dated September 13, 1978 on Northern Ireland.

The reply is totally evasive and unresponsive to the points clearly and specifically raised in our letter. We can only deduce that the underlying implication of the Department's letter is to convey to us that our assessment of the problems of the six counties of Northern Ireland was perfunctory and unrealistic.

As we informed you, we are thoroughly familiar with your statement of August 30, 1977 on Northern Ireland. We also have no doubt that the statement "was applauded by both the British and Irish governments" as well as the entrenched political parties beholden to those governments. These elements are precisely the ones which have been responsible for continuing the political turmoil.

We have incontrovertible evidence, in the form of tapes and transcripts, that the North Irish people, both Catholics and Protestants, earnestly and sincerely plead for United States assistance in achieving political and social stability. They are convinced that no solution is possible until and unless the separate guarantees by the British and Irish Republic to their constituencies are supplanted by a neutral and disinterested guarantor. They see the United States as the only country able to fulfill that role.

The Department's letter inexplicably fails to comment on our concern over the violations of human rights prevalent in Northern Ireland. Your Administration which has forcefully and publicly spoken out against human rights violations in all parts of the world surely cannot stand idly by and condone the appalling excesses in Northern Ireland.

We admit that it is extremely difficult for the United States to be critical of British actions in Northern Ireland because of our traditional ally relationship with the United Kingdom. But nonetheless, we

submit that the people of Northern Ireland have the same right as the peoples of the world to call for the protection of their human rights. We are certain that an impartial investigation of this situation will confirm our observations.

We have no desire to meet further with Mr. Nimetz, Counselor of the Department of State, since we have already had the opportunity to discuss our findings with him and other officials of the State Department prior to the drafting of the October 5th letter. The letter merely reiterates the statements that were made verbally to us during this meeting.

Mr. President, we urge you to initiate an impartial detailed investigation of the conditions and observations contained in our letter to you. Your achievements at Camp David could be repeated in the resolution of this turbulent situation which has existed for over eight centuries in Northern Ireland.

Sincerely,

JOSHUA EILBERG,
Chairman,
HAMILTON FISH, Jr.,
Ranking Member.

THE WHITE HOUSE,
Washington, October 23, 1978.

HON. HAMILTON FISH, Jr.,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN FISH: The President asked me to acknowledge his receipt of your letter of October 17 regarding the situation in Northern Ireland. The President has been apprised of your disappointment with the State Department's response to your earlier letter.

The President appreciates your concern and has the matter under consideration.

Sincerely,

FRANK MOORE,
Assistant to the President
for Congressional Liaison.

DEPARTMENT OF STATE,
Washington, D.C., December 13, 1978.

HON. HAMILTON FISH, Jr.,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. FISH: This is in further response to your letter to President Carter of October 17 concerning Northern Ireland, following my interim acknowledgement of November 13. We regret that you and Mr. Eilberg were disappointed by our earlier reply to you on this subject.

We welcome your views and respect your judgment on the desirability of a deeper U.S. involvement in Northern Ireland. Our own view, however, is that such involvement would likely be construed as US interference by the principal parties involved, including the British and Irish Governments and most elements of political opinion in

the North. We believe that the vast majority of those directly involved in Northern Ireland understand the reasons for our policy of impartiality and non-involvement.

With regard to human rights, we are concerned by and take very seriously charges of torture and other abuses wherever these are alleged to occur and regardless of the government alleged to be responsible. Our concern and attention extends to alleged events in Northern Ireland.

Means exist to check these allegations. For example, a British Committee of Inquiry is currently investigating police procedures in Northern Ireland, following an Amnesty International report of maltreatment of suspected terrorists. The British Government states it will not condone the ill-treatment of persons held in custody, and has in the past compensated individuals wrongly subjected to unacceptable interrogation techniques.

Britain also recognizes the rights of individuals to petition for redress of grievances under the European Convention on Human Rights. The European Human Rights Commission in Strasbourg is currently investigating four such cases where it is alleged the rights of prisoners have been violated in Northern Ireland. We await with interest the results of the Commission's investigation and fully endorse all efforts to determine objectively the accuracy of the allegations that have been made.

We recognize the sincerity of your interest in this issue. Though we may not agree on the best course to follow, we appreciate having the benefit of your views, sharing as we do a common concern for the fate of the people of Northern Ireland.

I am sending this same reply to Congressman Eilberg.

Sincerely,

DOUGLAS J. BENNET, Jr.,
*Assistant Secretary
 for Congressional Relations.*

CHAPTER XIX.—CONCLUSIONS

A. VISA ISSUANCE POLICY APPLICABLE TO IRISH NATIONALS

The delegation feels that the Department of State may have acted unfairly and unjustifiably in denying or revoking non-immigrant visas to certain Irish nationals desirous of visiting the United States.

Records of detention, in the absence of valid criminal convictions, were used in some cases as a justification for these actions.

Presumption of participation in terrorist groups and activities in some cases were made on the basis of political affiliation.

Some cases indicated a distrust of the motives set forth by the applicant for visiting the United States as a reason for refusing applications.

Interviews with various applicants whose visas were denied or revoked demonstrated that Department of State personnel frequently dealt with applicants in an unsympathetic and high-handed manner. Conflicting reasons were given as a basis for denial. Interviews were delayed. There was a general reluctance to discuss the merits of a case with the applicant. Personal travel or appointment arrangements made by the applicants were often disregarded without adequate basis or excuse.

It appeared to the delegation that the basic information on which decisions were made were mainly forthcoming from official sources from the British or Irish Republic governments. Terrorist allegations were accepted without any attempt to seek impartial or independent corroborating information from other sources.

The delegation failed to understand the rationale of labeling only the individuals in the provisional IRA as terrorists and exonerating individuals in Loyalist paramilitary organizations. This practice is reflected in the issuance of visas to well-known members of these Protestant paramilitary organizations, and the denial of U.S. visas to alleged members of the IRA.

It was also noted that there was a general presumption by consular officials that applicants identified with the Republican movement were visiting the United States for purposes of raising funds for the purchase of arms and munitions subsequently smuggled into Northern Ireland for use by the terrorists.

The delegation recommends that the Department of State make every effort to investigate the circumstances and details of any detention, arrest, or conviction record supplied to the Consul on any applicant for a visa. The criminal and jurisprudence system in Northern Ireland certainly makes it incumbent upon the Consul to go behind each of these records.

Considerably more effort should be made to differentiate between political activity and terrorist activity which now appears to be regarded as synonymous.

In addition, the delegation feels that the Consulate General in Belfast should develop a local look-out file by meticulously gathering all information available which would serve in adjudicating visa applications. The gathering of this data should be continuous, detailed and regarded as a major activity of the post.

The delegation urges the Department of State to reinvestigate and re-evaluate all cases of Irish nationals whose visas have been revoked or denied if and when new applications are submitted by these persons.

B. HUMAN RIGHTS IN NORTHERN IRELAND

The delegation feels that this report makes the case that individual human rights are being violated every day in Northern Ireland.

While strongly deploring the violence of the Provisional IRA, the delegation believes the continued suppression of individual legal, human and civil rights—itsself, a form of violence—can only foster disregard for authority.

The younger generation which is bearing the brunt of these excesses has become seriously embittered and consequently more militant and hardened. A jail sentence for them has now become a fact of life. All they have seen during their adolescence has been the gun, the bomb, the house search, maltreatment and the jail.

The British experience in Northern Ireland tends to demonstrate that the application of severe measures has made little impact on deterring violence. This fact was apparent by the fresh wave of bombings and assassinations which took place in December, 1978 after the British government had begun to believe that their enforcement methods were producing a relative calm in Northern Ireland.

The delegation calls on the Department of State to include in its Human Rights reports an examination of the conditions in Northern Ireland. The delegation believes that such an examination would be consistent with the Administration's human rights policy.

The delegation has expressed its opinion on this subject in its letters to the President on September 13, 1978 and October 17, 1978.

C. IS THERE A ROLE FOR THE UNITED STATES IN ATTAINING A PEACEFUL POLITICAL SOLUTION IN NORTHERN IRELAND?

If there is ever to be a permanent peaceful political solution to the impasse in Northern Ireland, the delegation feels that the climate at the present time seems to be more favorable than in the past.

The delegation came away from Northern Ireland convinced that honest efforts are presently being made on both the Republican and Loyalist sides to find a political solution which would be acceptable to all of the people of Ulster.

Certain conditions must exist to create the proper climate necessary to enhance further progress in pursuing peaceful negotiations.

The delegation feels the principal conditions are:

One, a clear expression of the long-range intentions of the British Government;

Two, a mutual effort by the British and Irish Republic Governments to encourage negotiations between the two factions by some positive indication of non-intervention in favor of their respective constituencies;

Three, agreement by the paramilitary organizations on both sides to cease and desist from engaging in any violence or terrorist activities. A paramount concern and a roadblock to a political solution is the prospect of an eruption of bloodshed and violence following the withdrawal of British troops;

Four, a neutral government must agree to act as a "guarantor" or "honest broker" to mediate the negotiations among the various factions, hopefully arriving at an acceptable political formula.

The report shows that it is almost universally agreed that the United States is in the best position to assume the role of "guarantor" or "honest broker."

The delegation expresses the wish that the Administration reassess its present position on Northern Ireland and seek to assist in a political solution, such as it has done in the Middle East.

EPilogue

A. NEW OUTBREAK OF VIOLENCE IN NORTHERN IRELAND

While compiling this report, the delegation was indeed disturbed to learn of a new wave of bombings in Ulster and Great Britain attributed to the provisional IRA which started in the middle of November.

Some newspaper accounts state that the new terroristic activities are designed to draw attention to the political impasse in Northern Ireland and to make the Irish question an issue in the up-coming British elections to be held some time next year.

The violence in Ulster had decreased since the peak year in 1972 when 467 people died and there were 1,495 explosions. The year, 1978, up until the end of October, 71 people died and there were 286 explosions.

It was also observed that the bombings were renewed at the same time that Northern Ireland Secretary of State Roy Mason was in the United States seeking fresh industrial investments in Northern Ireland. The bombings apparently were instigated to embarrass Mr. Mason and impede his efforts.

At least one church spokesman in England intimated that the bombings were "very much connected" to the H-Block situation.

Bishop Daly was quoted as condemning the latest bombings by saying that such atrocities were eroding what little public support was left among those concerned over prison conditions and interrogation methods.

While it seems counter-productive to have the provisional IRA seek to discourage more industry into Ulster, the realization exists that the new plants brought in have failed to make a dent in the Catholic ghettos where the unemployment rate still runs 30 to 40 percent among youths. Industry apparently is still dominated, especially at the more skilled level, by Protestants.

One newspaper report from Belfast stated that the police and army sources said a small urban guerrilla group had begun exploding bombs and firing at British soldiers in Northern Ireland in early December. The group is called the Irish National Liberation Army and is believed to be made up of tightly knit revolutionary leftists. It is seen as more directly political than the main guerrilla force, the Provisional Irish Republican Army, which some leftists consider to be right-wing and nationalist. The Department of State tends to discount the existence of this guerrilla group.

The delegation sought the opinions of some of the persons with whom it was in contact during the visit to Northern Ireland as well as an evaluation by the Northern Ireland government, on the recent renewed outbreak of terrorist activities in Northern Ireland and England.

It is accepted that the bombings have been carried out by the Provisional IRA.

Several possible explanations for the escalation of the bombing campaign in Northern Ireland and its renewal on the British mainland are:

(a) The need to expose the fatuity of the claim that they were defeated;

(b) The pressure emanating from the prisoners, particularly H-Block (Maze Prison) and their relatives for military action in the campaign for the restoration of political status to prisoners;

(c) The need to bring further pressure to bear upon British public opinion in order to accelerate the demand for the withdrawal of the British Army from Northern Ireland;

(d) A desire to force the British Government to take a political initiative with regard to the solution of the Irish problem.

It was agreed that with the postponement of the British general election, the provisional IRA felt they could not remain inactive for such a long period. They seem to be determined to make the Irish problem an issue in the coming British General Election campaign.

The delegation sought the opinion of the Northern Ireland office on its assessment of the renewed terrorist activities. The inquiry was addressed to the Minister of State Don Concannon through the U.S. Consul General in Belfast, Charles Stout.

Minister Concannon's reply dated February 8, 1979 follows:

NORTHERN IRELAND OFFICE,
STORMONT CASTLE, BELFAST,
February 8, 1979.

CHARLES R. STOUT, ESQ.,
*Consulate General of the United States of America,
Belfast.*

DEAR CHARLES: I am writing in reply to your letter of 2 January 1979, with which you enclosed correspondence from Congressmen Eilberg and Fish seeking information about terrorist activity in Northern Ireland and England during November and the early part of December. As you know, we have asked the Home Office to reply separately about the situation in England.

I have no doubt that in the United States, as is often the case in Great Britain, the media's treatment of Northern Ireland frequently gives disproportionate attention to violence. The positive achievements made by the Province and the normal lives led by the vast majority of its people, which you as a resident here will appreciate, do not make the headlines in the world's press. I am sure you will give full force to this in replying to Congressmen Eilberg and Fish.

The main feature of the Provisional IRA's activity during November was a series of apparently co-ordinated bomb attacks against commercial targets in towns and cities throughout the Province—these being the first such attacks to have occurred for some time. They commenced during 14-16 November when a total of nine car bombs were used against seven provincial towns. There was considerable damage to premises. On 18 November, 31 incendiary devices were planted, mainly in shops, in towns throughout the Province, but damage was light. There were further attacks during the beginning of December.

The extent of the damage and disruption that might have been caused was greatly reduced by the success of the Army in defusing devices and by pre-emptive action taken by the RUC and the Army. The most obvious form of pre-emptive action is the use of vehicle checkpoints and at one of these on 13 November a van carrying a large number of explosive devices was intercepted near Hillsborough, before it reached Belfast. However, you will not expect me to go into details on the strategy adopted by the security forces for preventing the terrorists from reaching their target.

The main thrust of the terrorist campaign at the end of last year was thus against property, in particular commercial targets. However, in the months of November and December there were 10 deaths, 4 of these being civilians (including 2 employed by the Prison Service) and 6 servicemen.

I am sure you would wish me to put all this in a broader perspective. In each of the years 1972 to 1974 around 47,000 lbs. of explosives were used in bomb attacks; in 1978 5,443 lbs. were used. The number of persons killed as a result of terrorist action in Northern Ireland in each of the years since 1972 is as follows:

Year	Total number of deaths	Number of civilian deaths
1972.....	468	322
1973.....	250	171
1974.....	216	166
1975.....	247	216
1976.....	297	245
1977.....	112	69
1978.....	81	50

These figures show that our security policy of acting within the normal framework of the criminal law, (i.e. seeking evidence to arrest, charge and convict terrorists before a Court of law) is working. This, together with increasing disillusionment on the part of all sections of the community with the paramilitary organisations, has led to a sustained reduction in the level of violence. We will of course not rest until terrorism has been completely eradicated from Northern Ireland.

It is our view that the Provisional IRA no longer have the resources or the support within the community to mount a prolonged campaign. Nevertheless we are not complacent and as the Secretary of State has always made clear, the PIRA do have the capacity and the organisation to increase the level of violence for relatively short periods. This was what happened in November and December 1978: you will recall that it also occurred at much the same time in 1977. It is significant to note that in November and December 1978 there were 81 and 89 explosions respectively; in October 1978 and January 1979 there were 25 and 19 explosions.

The attitude of the people living in Northern Ireland bears out our interpretation of the current security situation. During the upsurge of terrorist activity in November and December there was no panic reaction; people refused to be diverted from carrying on with their everyday business. There was little pressure to restore physical secu-

rity measures that had been relaxed over the summer and in general there was an air of confidence in the ability of the security forces to apprehend those responsible for the attacks. In 1978, 843 persons were charged with terrorist type offences.

We shall continue to deal with terrorists through the normal process of law. Those who kill, maim and destroy are criminals and will always be treated as such.

Yours sincerely,

J. D. CONCANNON,
Minister of State.

The delegation at the time of publication had not received a separate reply from the Home office as indicated in the first paragraph of Minister Concannon's letter.

B. MALTREATMENT OF SUSPECTS IN POLICE CUSTODY AT CASTLEREAGH INTERROGATION CENTER

The delegation refers to Chapter XIV of this report in which Father Denis Faul and Father Charles Murray calls attention to alleged maltreatment of suspects in the Castlereagh Interrogation Center.

Recent reports has confirmed that in fact Northern Ireland police have mistreated IRA suspects. Two recent newspaper articles which report on the situation are included herewith.

The newspaper article dated March 15, 1979 refers to a report of a government committee of inquiry headed by Judge Harry Bennett which was instituted after the charges made in the Amnesty International report were published.

The delegation has included the full Bennett report issued in March, 1979 as Appendix C:

[From the Washington Post, Mar. 11, 1979]

ULSTER DOCTOR SAYS IRS SUSPECTS MAIMED IN POLICE CUSTODY

(By Leonard Downie Jr.)

LONDON, March 10—A Northern Ireland police surgeon has revealed that 150 to 160 suspected IRA terrorists he examined in police custody during the past three years were beaten and otherwise "physically illtreated" while being interrogated by police in Belfast.

In a taped interview to be broadcast Sunday on Weekend World, a popular television news magazine program here, Dr. Robert Irwin said he was disturbed by the injuries he found prisoners to be suffering after they had been questioned by the Royal Ulster Constabulary at its Castlereagh interrogation center in Belfast.

"I've seen five ruptured eardrums," Irwin said. "I have seen two injuries to bones of the forearm . . . I have seen joint injuries in both the wrist and to the little joints in the fingers, which have been caused by squeezing the hand or by twisting the fingers."

Irwin said these are not injuries that could be self-inflicted, as the authorities in Northern Ireland have sometimes claimed.

"Ruptured eardrums, I would say, being one of the most serious injuries, could not possibly be self-inflicted," he said. "There is not enough leverage in one person's arm to rupture their own eardrums, and falling about does not produce a ruptured ear. It can only be produced by a blow with force from somebody else.

"Also, some of the sites of some of the injuries would defy even a contortionist to produce the injuries, and the extent of the bruising that has been seen on occasions indicates that considerable force had been used from some other source."

Irwin said such mistreatment, which he attributed to "probably twenty" Ulster police officers at Castlereagh, is "destroying" the Ulster police force's reputation and undermining the "magnificent" work of the majority of its of-

ficers, who he said have helped the British army reduce violence in Northern Ireland in recent years.

His public statements corroborate an Amnesty International report of last summer which described 78 cases of brutality allegedly suffered by suspected terrorists in police custody in Ulster. Amnesty International complained repeatedly in the report that Ulster police authorities would not allow access to police surgeons or their records.

The report prompted the British government to set up a committee, headed by a noted judge, to investigate these allegations and report on interrogation methods in Northern Ireland.

The committee's inquiry is finished and its report is now being reviewed by Britain's Northern Ireland secretary, Roy Mason, before being made public later this month. A spokesman for the Northern Ireland office said today he could not comment on Irwin's statements or on reports here that the investigating committee has found the Ulster police interrogation methods "leave a lot to be desired."

Irwin, an official of the Association of Police Surgeons of Great Britain, said he will resign if the committee's report does not acknowledge the mistreatment he has found. He said he also would urge the other 600 police surgeons in Britain to "walk out in protest."

A Protestant lawyer recently resigned from the complaints committee of Northern Ireland's police authority because, he said, it took no action on a number of specific complaints of "alleged torture" he had presented. They don't want to know," attorney Jack Hassard said.

More than 1,000 formal allegations of police brutality during interrogations of suspected IRA terrorists in Ulster have been made in the last three years. Some police officers have been prosecuted, but none has been convicted.

British security forces have killed 10 persons in Northern Ireland in the past year. Authorities have acknowledged that some innocent people may have been killed mistakenly in these incidents, and there have been disputes about whether some suspected terrorists were shot by British soldiers although they offered no resistance.

British officials, who point out that sectarian killing has decreased dramatically in the recent years of direct British rule, nevertheless have become increasingly sensitive about allegations that the British Army and the predominant Protestant Ulster police have been brutal in their treatment of Catholic terrorist suspects.

The European Commission of Human Rights, which previously found the Ulster police guilty of brutality in their treatment of IRA suspects interned without trials—a practice later abandoned—is now investigating allegations that convicted terrorists are being mistreated in prison.

For the past year, about 300 IRA terrorists imprisoned in the Maze prison outside Belfast for robbery and other crimes have been refusing to wear clothes, wash or use the prison's toilet facilities, in an IRA-orchestrated campaign to have them recognized as political rather than criminal prisoners.

[From the Washington Post, Mar. 15, 1979]

BRITISH INQUIRY FINDS ABUSE IN ULSTER

GOVERNMENT PROBE CONCLUDES NORTHERN IRELAND POLICE MISTREATED
IRA SUSPECTS

(By Leonard Downie, Jr.)

LONDON, March 14—A British government inquiry into police interrogation practices in Northern Ireland has concluded that suspected IRA terrorists have been physically mistreated by Ulster police trying to extract confessions from them.

The report's conclusions, based on medical evidence and interviews with police and medical informants constitute the British government's first official acknowledgement that the Ulster police have mistreated some IRA suspects.

The government committee of inquiry, headed by Judge Harry Bennett, has found numerous cases in which the Irish-Republican Army suspects in Ulster police custody suffered serious injuries that "were not self-inflicted," according to sources with knowledge of the report's contents.

The committee reportedly recommends that interrogations of IRA suspects in Ulster be monitored by senior police officials on closed-circuit television, that the police complaint process be improved and that terrorist suspects be allowed to contact a lawyer within 48 hours of their arrest, a right they do not have under the British Prevention of Terrorism Act.

Northern Ireland Secretary Roy Mason reportedly was disturbed by the findings and has decided to carry out as many of the committee's recommendations as possible.

Mason received the report several weeks ago but had not planned to present it to Parliament or the public until next week. Highlights of the report were confirmed by informed sources here today after some had been revealed by the Guardian newspaper.

Last Sunday, an Ulster police surgeon, Dr. Robert Irwin, said on television here that he had examined many suspected IRA terrorists who were seriously injured during police questioning at the Royal Ulster Constabulary's Castlereigh interrogation center in Belfast. His statements were attacked this week by Ulster authorities including the chief constable of the Royal Ulster Constabulary, who said Irwin had made formal brutality complaints in only 10 cases.

Mason has refused comment to reports or Parliament since Irwin's television interview created new controversy about Ulster here. In the past, Mason has strongly praised the Ulster police for helping the British Army reduce sectarian violence and killing during his 2½ years as the British official in charge of Northern Ireland.

Mason has been gradually withdrawing British soldiers from Northern Ireland turning over more and more of the responsibility for security there to the Royal Ulster Constabulary.

The Bennett Committee inquiry began last summer after Amnesty International detailed 78 cases of alleged brutality at the Castlereigh interrogation center. The committee was authorized to report on interrogation practices generally, rather than investigate individual cases in depth.

Critics of the British government's Northern Ireland policy are not expected to be satisfied with the Bennett Committee's report for this reason. Gerry Fitt, a Catholic Social Democratic and Labor Party member of Parliament from Northern Ireland, said today that general conclusions about brutality would not be enough. He said he wanted every individual case investigated thoroughly and the police responsible for mistreatment brought to trial.

The Bennett Committee's report and Irwin's televised testimony about brutality came at a particularly inopportune time for the British government, which assumed direct rule over Northern Ireland in 1972.

Next week, Parliament debates the further extension of the five-year-old "temporary provisions" of the Prevention of Terrorism Act, under which terrorist suspects can be detained without charge for seven days and can be convicted of terrorism, usually on their own confession, by a judge sitting without a jury. Opponents of the act are expected to use the new revelations of police brutality as reasons the detention powers and the reliance on confessions should be restricted.

The British government also has become increasingly concerned about the IRA's propaganda efforts abroad, particularly in the United States, to discredit a recent crackdown on violence in Northern Ireland.

The IRA has drawn attention to several hundred IRA prisoners living without clothes or blankets in cells fouled by human waste in the Maze Prison in Ulster. Northern Ireland officials have emphasized that the prisoners themselves have refused to wear clothes or use toilet facilities in protest against the British government's refusal to classify them as political prisoners.

The European Commission on Human Rights, which found Northern Ireland guilty several years ago of mistreating IRA suspects imprisoned without trials, is now investigating conditions at the Maze Prison. To present their side of the story about the prison, which was built as a model facility, Northern Ireland officials have taken members of Parliament on a tour of the prison and plan to take reporters inside soon.

C. H. BLOCK OPENED TO REPORTERS

In its meeting with Minister of State, Don Concannon, on August 30, 1978, the delegation urged the Minister to open Long Kesh, par-

ticularly H-Block to the international press. Chapter XVI reporting the delegation's press conference renews this appeal.

The following newspaper article gives an account of the first visit ever authorized into the Maze by Northern Ireland authorities:

[From the Washington Post, Mar. 16, 1979]

PRESS TOURS ULSTER PRISON BEFOULED BY IRA PROTESTERS

(By Leonard Downie Jr.)

BELFAST, March 15—Excrement covers the concrete walls of the prison cells like an uneven coat of paint. Cold air pours in through the smashed-out window, moderating the stench.

On the floor are two bare foam mattresses with clumps of dark woolen blankets on them. In one corner is a pile of more excrement, shredded toilet paper, broken egg shells and other garbage. In another is an open plastic chamber pot full of urine.

Besides two orange plastic mugs and water pitcher on the window ledge, the only other object in the cell is a black-beaded rosary, somehow immaculate and shiny, hanging from the light switch against the excrement on the wall.

This is how 363 convicted IRA terrorists have chosen to live for the past year: naked, with only the woolen blankets to wrap around them, in cells fouled with their own excrement and urine in the recently built, H-shaped cellblocks of Northern Ireland's sprawling Maze Prison near here.

The prisoners, mostly young Roman Catholic men of the Irish Republican Army who have been convicted of crimes ranging from assault and terrorist conspiracy to robbery and murder, are refusing to dress, use toilet facilities or clean their cells. They are protesting the refusal of the British government, which rules Northern Ireland, to classify them as political rather than criminal prisoners, because of their efforts to wrest Protestant-dominated Northern Ireland from Britain.

The conditions in which they live, although self-inflicted, have become a nagging problem for the British government in its ongoing propaganda war with the IRA in Northern Ireland. The European Commission on Human Rights is conducting a formal inquiry into the treatment of "H-Block" prisoners in the Maze.

The IRA has successfully used its version of "the dirty protest" in the H-block to raise new money and political support from the Irish community in the United States.

Today, the Northern Ireland authorities, to present their side of the story, allowed reporters into the Maze Prison for the first time.

The tour came just before the official release tomorrow of a government report already publicized on alleged brutality by some Ulster police in their questioning of IRA suspects—a second Northern Ireland issue that worries the British. Many IRA prisoners in the Maze were convicted on the basis of confessions obtained by Ulster police.

Maze Prison was built in the early 1970s to house the overflow of Catholic and Protestant demonstrators and terrorists arrested for sectarian violence in Northern Ireland.

The dozen reporters, photographers and television cameramen representing the media of Britain, Ireland and the United States were taken through the prison and allowed to tour H-block buildings and cells selected at random.

"We have been accused of taking people to parts of the prison we want them to see," said the prison governor, who, like the other Maze officials, asked that his name not be used for protection of himself and his family. He said he wanted the reporters to select the cellblocks "to dispel this. We can hold our heads high and assert we had no skeletons in our cupboard."

We went through one of the H-block occupied by "dirty protest" prisoners and inspected cells from which the prisoners had been temporarily removed minutes before our arrival. We were not allowed to interview any protesting prisoners.

As we walked through the cellblock, we heard them shout IRA slogans at us and bang loudly with their plastic cups on the green metal doors of cells we did not enter. "Long live the IRA," they shouted. "We are winning."

We saw one wing of H-block cells receiving its periodic cleaning, done every five to ten days, according to prison officers, while the prisoners are shifted to

other cells. Workmen in plastic sanitation suits used high-pressure steam and garden hoses to clean the excrement off the walls and wash the urine off the floors.

Prison officials said the cells had no furniture because the protesting prisoners had fouled, smashed or burned it all.

We also toured other H-block cells where more than 600 Maze prisoners, including other IRA members and sympathizers, have accepted criminal status and are cooperating with prison authorities. Their neat, clean cells are furnished with beds, shelves, lockers, and bulletin boards with pictures and posters on them.

These cooperating prisoners have access to large playing fields, a new gymnasium and well-equipped vocational training and prison industry facilities.

The one complaint these prisoners made to the visiting reporters was their lack of physical freedom. To move from their 8-by-10 foot cells to the rest of the prison, they had to be accompanied by guards through a series of locked doors. They are driven to activities on buses that ply their way through many more gates in the 18-foot barbed-wire barriers that make the prison—which holds half of Northern Ireland's total prison population—a literal maze. The 146-acre prison, named for the area outside Belfast in which it is located, has never had an escape from the H-blocks.

We also saw another segregated part of the prison where nearly 600 more men in "special category status" live in corrugated metal huts fenced with barbed wire that resemble prisoner-of-war camps.

Under the special category status, initiated in 1972, after a series of violent protests at another prison, both Catholic and Protestant militants convicted of offenses "connected with civil disturbances" were allowed to serve their sentences in these hastily built compounds. They wear their own clothes and are not required to do prison work.

The special category prisoners are grouped by the Ulster paramilitary organizations they belonged to and their huts bear IRA slogans or, in the case of the Protestant convicts, the names of World War I battles in which Protestant Ulster regiments fought.

The British government decided in 1976 to curtail the special category status as part of a stiffer effort to reduce sectarian violence. At the same time, extra visiting rights, home furloughs and early paroles were offered convicts who behaved well under criminal status in the new H-block cells.

Some convicted IRA terrorists who wanted to join their compatriots in special category status began in late 1976 to refuse to wear prison clothes and use only their blankets as body cover, although prison officers said they were otherwise cooperative.

Then, last March, according to prison officers, the protesting prisoners suddenly stopped using toilet facilities, refused to clean themselves or their cells, began smashing things and became very hostile.

Authorities say they believe this dirty protest has begun because the lesser protest had not attracted enough attention or sympathy for the IRA prisoners.

IRA spokesmen say through their "H-block information center" in Belfast that the prisoners were forced into the dirty protest by abusive guards who kicked over chamber pots in the cells and required prisoners to address them as "Sir" to gain permission to go from their cells to the toilets.

There are also 12 noncooperating Protestant prisoners. They still use prison toilet facilities and have not fouled their cells.

A Maze prison doctor said the dirty protest prisoners are "remarkably healthy" in part because their isolation does not allow contact with disease from the outside. However, several months ago, he said, protesting prisoners in two of the H-blocks were forced to shower and have their hair and beards cut to curb an outbreak of head lice.

Roy Mason, who has been the British government's Northern Ireland secretary throughout the Maze protest, has stated repeatedly that the government can never go back to giving prisoners special category status.

"Remember, we are fighting a terrorist group," Mason said on a recent BBC television program on which he defended the British policy against criticism from some U.S. congressmen.

"There is no question of giving back special category," Mason's top deputy, Don Concannon, said after our tour of the Maze. "There is no question of amnesty. The harder that is rubbed in the better. The protesting prisoners have told me. 'It's special status or nothing.' I have to say it will be nothing."

APPENDIX A

LAWS AND ROYAL COMMISSION REPORTS DEALING WITH TERRORIST ACTIVITIES IN NORTHERN IRELAND

The delegation feels that a complete understanding of the present upheaval in the six counties of Northern Ireland under British rule is not possible without being conversant with the laws promulgated by the British Parliament in dealing with "terrorist activities" in Northern Ireland.

The Royal Commission's various reports, one under the Chairmanship of Lord Diplock issued in December 1972 and the other under the Chairmanship of Lord Gardiner in January, 1975 led to the enactment of the Northern Ireland (Emergency Provisions) Act of 1973 and the amendment to this Act in 1975.

The inclusion of the following reports and laws will contribute to a greater understanding of the report by the Subcommittee delegation :

1. The Diplock Report of December 1972
2. Northern Ireland (Emergency Provisions) Act of 1973
3. The Lord Gardiner Report of January, 1975
4. Northern Ireland (Emergency Provisions) (Amendment) Act, 1975
5. Northern Ireland (Emergency Provisions) Act, 1978

Although not included in this report, the British Parliament enacted Prevention of Terrorism Acts in 1974 and 1976 to combat terrorist activities in all areas of the United Kingdom.

For those persons interested in the provisions and effects of these laws, it is recommended that they consult the report issued by the Right Honorable Lord Shackleton in August, 1978 entitled "Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Acts of 1974 and 1976."



Report of the Commission
to consider legal procedures to deal
with terrorist activities in
Northern Ireland

Chairman
LORD DIPLOCK

*Presented to Parliament by
the Secretary of State for Northern Ireland
by Command of Her Majesty
December 1972*

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**COMMISSION ON LEGAL PROCEDURES TO DEAL
WITH TERRORIST ACTIVITIES IN
NORTHERN IRELAND**

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CHAPTER 1

INTRODUCTION

To the Right Honourable William Whitelaw, M.C., D.L., M.P., Her Majesty's Secretary of State for Northern Ireland.

1. We were appointed to consider "what arrangements for the administration of justice in Northern Ireland could be made in order to deal more effectively with terrorist organisations by bringing to book, otherwise than by internment by the Executive, individuals involved in terrorist activities, particularly those who plan and direct, but do not necessarily take part in, terrorist acts; and to make recommendations".

2. Our appointment followed upon the statement on security policy issued by the Northern Ireland Office on 22 September 1972, and was announced in full in a further statement on 18 October 1972. We held our first meeting on 20 October. Since then we have held a number of meetings, in private, during which we have heard evidence and discussed our findings.

3. From the outset we have treated our task as urgent. What we have learnt in the course of it about the conditions under which the ordinary criminal courts in Northern Ireland have to carry out their functions, and about the developments in the pattern of violence which have taken place even since we were appointed, has only served to increase our sense of urgency. It has not been any part of our function to inquire into individual complaints about the behaviour of members of the armed forces or the police in carrying out their duties of preventing and detecting terrorist crime or apprehending offenders. We are aware that complaints have been made. With violence so rife and political passions so strong we should have been surprised if they had not, whether with justification or for purposes of propaganda; but we have not invited particulars of these nor have any been volunteered in response to the invitation to submit written evidence to us contained in the statement of 18 October. We have confined our attention to the legal procedures which are, or could be made available, for dealing with terrorist activities. Unlawful abuses, by individual members of the security forces or the police, of any of the procedures which we recommend, if they should occur, would be criminal offences or civil wrongs. They can be dealt with by criminal and civil proceedings in the courts against the offenders themselves.

4. In fact we have received only three written representations. The bulk of our evidence has been oral and was taken from people with responsibility for the administration of justice in Northern Ireland, but we have also heard from representatives of the Civil and Armed Services. Almost all the evidence was heard in London, but our Chairman made two visits to

Northern Ireland, each lasting two days, during which he met members of the security forces on the ground. Like those who have been responsible for inquiries in the past in which there have been considerations of security, we do not intend to publish the evidence we have received nor the names of those who submitted it.

5. We are grateful to those who have given us the benefit of their advice and experience, and particularly to our Secretaries, Mr. J. F. Halliday of the Northern Ireland Office and Mr. A. H. Hammond of the Home Office. We have worked them hard to enable us to complete our Report within seven weeks of our being appointed. We owe a lot to them.

CHAPTER 2

SUMMARY OF CONCLUSIONS

6. Although in one sense there has been an intermittent state of emergency in Northern Ireland since it first became a separate province we regard the emergency which led to our appointment as that which has resulted from the escalation of terrorist activities since 1969. Our recommendations are intended to deal with this situation and to continue in effect only so long as it persists. Whether all of them should be so limited in duration is not for us to recommend.

7. In the following Chapters we have set out at greater length the conclusions which we have reached and the reasons for them. Those conclusions may be summarised as follows:

- (a) The main obstacle to dealing effectively with terrorist crime in the regular courts of justice is intimidation by terrorist organisations of those persons who would be able to give evidence for the prosecution if they dared (paragraphs 12-20).
- (b) This problem of intimidation cannot be overcome by any changes in the conduct of the trial, the rules of evidence or the onus of proof, which we would regard as appropriate to trial by judicial process in a court of law (paragraphs 21-26).
- (c) Fear of intimidation is widespread and well founded. Until it can be removed and the personal safety of witnesses and their families guaranteed, the use by the Executive of some extra-judicial process for the detention of terrorists cannot be dispensed with (paragraph 27).
- (d) Detention of terrorists is now subject to an extra-judicial process which provides important safeguards against unjust decisions; but however effective these may be in fact, they can never appear to be as complete as the safeguards which are provided by a public trial in a court of law (paragraphs 28-33).
- (e) It is therefore necessary to consider whether any changes can be made in criminal procedure which, while not conflicting with the requirements of a judicial process, would enable at least some cases at present dealt with by detention to be heard in courts of law (paragraph 34).
- (f) Recommended changes in the administration of justice, unless otherwise stated, apply only to cases involving terrorist crimes, defined as scheduled offences (paragraphs 6, 7, 114-119 and the Schedule).
- (g) Trials of scheduled offences should be by a Judge of the High Court, or a County Court Judge, sitting alone with no jury, with the usual rights of appeal (paragraphs 35-41).
- (h) The armed services should be given power to arrest people suspected of having been involved in, or having information about, offences and detain them for up to four hours in order to establish their identity (paragraphs 42-50).

- (i) Bail in cases involving a scheduled offence should not be granted except by the High Court and then only if stringent requirements are met (paragraphs 51–57).
- (j) The onus of proof as to the possession of firearms and explosives should be altered so as to require a person found in certain circumstances to prove on the balance of probabilities that he did not know and had no reason to suspect that arms or explosives were where they were found (paragraphs 61–72).
- (k) A confession made by the accused should be admissible as evidence in cases involving the scheduled offences unless it was obtained by torture or inhuman or degrading treatment; if admissible it would then be for the court to determine its reliability on the basis of evidence given from either side as to the circumstances in which the confession had been obtained (paragraphs 73–92).
- (l) A signed written statement made to anyone charged with investigating a scheduled offence should be admissible if the person who made it cannot be produced in court for specific reasons, and the statement contains material which would have been admissible if that person had been present in court to give oral evidence (paragraphs 93–100).
- (m) A secure institution should be provided as a matter of urgency in order to accommodate, when the juvenile court so directs, people aged under 17 years who are remanded in, or committed to custody having been charged with or convicted of offences connected with terrorist activities (paragraphs 101–109).
- (n) The grounds upon which a young person may be remanded or sentenced to prison should be extended so as to include cases in which the gravity of the offence makes confinement in any other place unsuitable (paragraph 110).
- (o) The mandatory minimum sentence of six months in a remand home for riotous behaviour by juveniles should be removed, giving the court a discretion to pass such a sentence for less than six months (paragraph 111).
- (p) The power of a juvenile court to sentence to a remand home for up to one month should be extended to enable such a sentence to be passed for any period up to six months (paragraph 112).
- (q) The limitation on a court's power to sentence a juvenile to detention for such a period as it thinks fit only when the offence is one for which an adult might be sentenced to imprisonment for 14 years or more should be removed during the emergency (paragraph 113).

CHAPTER 3

SCOPE OF OUR INQUIRY

1. Our terms of reference require us to consider :

“What arrangements for the administration of justice in Northern Ireland could be made in order to deal more effectively with terrorist organisations by bringing to book, otherwise than by internment by the Executive, individuals involved in terrorist activities, particularly those who plan and direct, but do not necessarily take part in, terrorist acts; and to make recommendations.”

2. Since we were appointed the power of the Executive to intern persons suspected of being involved in terrorist activities in Northern Ireland, under Special Powers Regulation 12, has been revoked. Detention in custody for more than 48 hours otherwise than as the result of trial and conviction in a court of law or pending such a trial, is now regulated by the Detention of Terrorists (Northern Ireland) Order 1972. Our recommendations can relate only to the future, not the past. So we regard our task as now being to consider whether there are any changes in the procedures for bringing criminals to trial, in the conduct of the trial itself or in the composition of the court of trial which could obviate or reduce the need to resort to detention under this new Order of individuals involved in terrorist activities.

3. “Terrorist acts” mentioned in our terms of reference we take to be the use or threat of violence to achieve political ends; and “terrorist activities” as embracing the actual use or threat of violence, planning or directing or agreeing to its use, and taking active steps to promote its use or to hinder the discovery or apprehension of those who have used or threatened it. All these have long been criminal offences under the ordinary law of the land. They are not new offences created specifically to deal with an emergency.

4. But although our concern is with criminal offences which form part of the general criminal law, we regard our present function as restricted to making recommendations to take effect only so long as the emergency which led to our appointment continues and applying only to a limited class of crimes. It does not fall within our responsibilities to recommend changes in the general criminal law or procedure of Northern Ireland. That would require longer consideration and wider consultation than the urgency of our task permits. It would in any event be better fitted to be undertaken by a more broadly constituted body than ourselves. This does not mean that changes which we propose for dealing with terrorist activities during the emergency are regarded by us as unsuitable for general application to all criminal offences in normal times. It means no more than that our recommendations are made without prejudice to future consideration of the question whether any of them is appropriate to be applied generally in the field of criminal law.

5. Although what distinguishes terrorist activities from other crimes involving acts or threats of violence is the motive that lies behind them, motive does not provide a practical criterion for defining the kinds of crime

with which we need to deal. The object of the terrorist organisations which concern us is to bring about political change in Northern Ireland by violent means; but terrorist organisations inevitably attract into their ranks ordinary criminals whose motivation for particular acts may be private gain or personal revenge. If those who commit such acts for non-political motives are associated with a known terrorist organisation, the effect on public safety and on public fear is no different because the motive with which they are committed is more base. We do not exclude these from the category of terrorist acts with which we are bound to deal.

6. We are driven therefore to classify the crimes to which our recommendations apply by reference to the legal definition of what constitutes the crime, and not by reference to the motives (which may be mixed) which led the offender to commit it. For this purpose we have taken those crimes which are commonly committed at the present time by members of terrorist organisations. Except where otherwise stated in later sections of this Report our recommendations apply to these crimes even though they may have been committed by criminals who are not connected with any terrorist organisation. They fall into seven broad categories:

- (1) All offences under statutes relating to firearms or explosives or other devices used for destructive purposes.
- (2) All robberies or assaults involving use of or threats to use firearms or other offensive weapons.
- (3) Malicious damage to property by fire.
- (4) Intimidation with intent to interfere with the course of justice.
- (5) Riot and similar offences under statute.
- (6) Other serious offences against person or property.
- (7) Membership of an association which is unlawful under Special Powers Regulation 24A, and other serious offences under those Regulations.

Intended to be also included are conspiracies to commit offences in any of the first five categories, and the cognate crimes of attempting, procuring or being accessory to the commission of any of those offences.

7. We have endeavoured to set out in Parts I, II, and III of the Schedule to this Report a more specific list of offences intended by us to be embraced by these categories. Most of them are already distinct and separate offences at common law or under statutes; but in certain cases, which we have indicated in the Schedule, legislation would be needed to create a new sub-division of a wider generic offence to enable the particular offence to be identified as falling within the categories. We do not put forward this Schedule as final or definitive, nor is it intended to be immutable. Further research into the voluminous statute law of Northern Ireland may bring to light some omissions, and we have not sought to indicate to parliamentary draftsmen the precise language in which any legislation to give effect to our recommendations should be couched. But in any event, the Schedule is based upon the methods for achieving their objects which actually are being used by terrorist organisations at the present time. These have been affected by changes in terrorist tactics in the past;

they are liable to change in the future. We accordingly recommend that any list of offences to which proposals made in later sections of this Report are to apply, should be subject to amendment by statutory instrument as terrorist tactics change or experience shows the need for omissions or additions. We shall hereafter refer to offences from time to time included in the list as "Scheduled Offences".

8. We started our task by asking ourselves in what respects the normal criminal procedures used in Northern Ireland are inadequate in the present emergency to deal with those involved in terrorist acts. These procedures do not differ markedly from those followed in England and Wales though there are some differences in practical effect in the ways in which they are applied to which we draw attention in later sections of this Report.

9. Terrorist acts are not the monopoly of extremists on one side only of the dispute which has long divided Northern Ireland. We prefer to use the labels "Republican" and "Loyalist" rather than "Catholic" and "Protestant" to describe extremists of the rival factions, for the gulf between them is one of politics rather than one of creeds and the methods used by the extremists are equally abhorrent to Christians of both persuasions. Hitherto, however, the majority of terrorist acts about which the facts are known to the security authorities have been committed on the Republican side and by members of the Provisional or the Official IRA. There is a large and detailed fund of information about these upon which we have been able to rely as a factual basis for the conclusions that we have reached. We are satisfied as to its general accuracy, though in the over-riding interest of the safety of the public and of individuals there is much of it that cannot be disclosed.

10. Terrorist acts which can confidently be attributed to extremist organisations on the Loyalist side have so far been much less frequent. Although there have been ominous signs of increase even since the date of our appointment a similar volume of information about them has not been available to us. That is why in our study of the effects of terrorism upon the administration of criminal justice we have had to rely mainly upon what is known about Republican terrorism. But terrorism is terrorism; its baneful effects upon the administration of justice are much the same from whatever faction it springs.

11. We may say, in anticipation, that there are several respects in which the normal process by which criminals are brought to trial and tried in England as well as Northern Ireland are inappropriate to the circumstances in which terrorist crimes are being committed in the latter country. In later sections of this Report we shall deal with trial by jury (paragraphs 35 to 41), formalities of arrest (paragraphs 42 to 50), bail (paragraphs 51 to 57), onus of proof of possession of firearms and explosives (paragraphs 61 to 72), admissibility of confessions (paragraphs 73 to 92), and of written statements (paragraphs 93 to 100) and the special problems of young terrorist offenders (paragraphs 101 to 113). But what we there propose are palliatives, not cures. There is a fundamental problem which must first be faced.

CHAPTER 4

THE BASIC PROBLEM

Minimum Requirements of a Judicial Process

12. Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms* (the "European Convention") to which the United Kingdom is a party, lays down certain minimum requirements for a criminal trial in normal times. Article 15 permits derogation from these requirements in time of public emergency threatening the life of the nation—a condition which we consider is unquestionably fulfilled in Northern Ireland at the present time. But if decisions as to guilt are to be made by tribunals, however independent or impartial, which are compelled by the emergency to use procedures which do not comply with these minimum requirements, we do not think that a tribunal which fulfils this function should be regarded or described as an ordinary court of law or as forming part of the regular judicial system or should be composed of judges who also sit in the regular criminal courts in Northern Ireland.

13. Northern Ireland has always been a province whose inhabitants have been sharply divided into two rival factions by differences of creed and politics. The judiciary has nevertheless managed to retain a reputation for impartiality which rises above the divisive conflict which has affected so many other functions of government in the province; and the courts of law and the procedures that they use have in general held the respect and trust of all except the extremists of both factions. We regard it as of paramount importance that the criminal courts of law and judges and resident

*ARTICLE 6

(1) In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the Press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

(2) Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

(3) Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

magistrates who preside in them should continue to retain that respect and trust throughout the emergency and after the emergency has come to an end. If anything were done which weakened it, it might take generations to rebuild, for in Northern Ireland memories are very long.

14. For this reason we would find ourselves unable to recommend any changes in the conduct of a criminal trial of terrorist offences in a court of law in Northern Ireland which would have the result that it no longer complied with the minimum requirements of Article 6 of the European Convention. Any changes in procedure which we propose for adoption by courts of law should, we think, fall within those minimum requirements. A just result may be obtainable by other methods but the use of these is not, we think, appropriate to an ordinary court of criminal law.

15. **The minimum requirements are based upon the assumption that witnesses to a crime will be able to give evidence in a court of law without risk to their lives, their families or their property. Unless the State can ensure their safety, then it would be unreasonable to expect them to testify voluntarily and morally wrong to try to compel them to do so.**

16. **This assumption, basic to the very functioning of courts of law, cannot be made today in Northern Ireland as respects most of those who would be able, if they dared, to give evidence in court on the trial of offences committed by members of terrorist organisations.**

The Effects of Intimidation

17. In Belfast and in Londonderry the IRA terrorist groups operate from those areas which are Republican strongholds. For a long time these were "No Go" areas into which neither the police nor the army entered. Since July 1972 the army have been able, at the cost of casualties, to maintain armed patrols in the streets, and to launch sporadic raids on premises to make arrests and to seize arms, explosives and other incriminating material. But they are not in a position to ensure the personal safety of individual citizens who reside in these areas or who have to pass regularly through them or near by. In the nature of things, it is the people who live in these areas who are most likely to have first-hand knowledge of who committed terrorist acts or planned and directed them. Yet these are the people who would put their lives, their families, their homes at greatest risk if it were suspected by members of the terrorist organisations that they had given information to the security authorities. The fear of revenge upon "informers" is omnipresent. It is not limited to urban areas. It extends to those who live in relative isolation in the country exposed to terrorist raids launched from across the border. It extends to all classes of society. It is not an idle or irrational fear. It is justified in fact by many well authenticated instances of intimidation, and not least by the example, familiar to all other potential witnesses, of a witness who was shot dead in his home in front of his infant child the day before he was due to give evidence on the prosecution of terrorists. Even where a terrorist crime is committed outside the more dangerous areas and in the presence of less vulnerable eye-witnesses the pervading atmosphere of fear leads them to profess their inability to identify the culprits or to give any other evidence in court which would

inculpate them. No one wants to take the risk of being "involved". In the result, with increasingly rare exceptions, the only kind of case in which a conviction of a terrorist can be obtained by the ordinary processes of criminal law is one in which there is sufficient evidence against the accused from one or more of three sources: (1) oral evidence by soldiers or policemen, whose protection can be more readily ensured; (2) physical evidence, such as finger-prints, and (3) an admissible confession by the accused.

18. Inability to prosecute in other cases does not mean that there is not a continuing flow of information to the security authorities about terrorist organisations and terrorist crimes—much of it anonymous but much too from known sources living within the Republican strongholds or even members of the IRA themselves. But this information is given only upon the understanding that the source will never be disclosed in any circumstances in which it could come to the ear of any member of the IRA. If there were any weakening of the implicit trust that this understanding would never be broken by the security authorities these sources of information would dry up. The intelligence which they provide is operationally essential to the army's role in protecting life and property from terrorist crimes, and in enabling them to arrest terrorists red-handed or in other circumstances in which a conviction can be obtained without calling oral evidence from witnesses who are not in the army or the police.

19. Although what we have so far described has been confined to the effects of Republican terrorism upon the ability of the prosecution to induce witnesses to terrorist crimes to give evidence in a court of law, we repeat that this is not intended to convey that there have been no terrorist activities in Northern Ireland by extremists on the Loyalist side nor that there is not risk of similar intimidation of potential witnesses from this source too. If Loyalist terrorism were to increase, this would extend the area of the problem, it would not change its character. *Mutatis mutandis* what we have said is likely to be equally true of terrorism by extremist groups operating from areas which are comparable strongholds of Loyalist opinion.

20. The minimum requirements that we have adopted as the criterion for criminal trial by a court of law, permit of hearings *in camera* where, *inter alia*, the interests of public order or national security so require. But even where the hearing takes place *in camera* they call for the accused to be informed *in detail* of the nature of the accusation against him and to examine or have examined witnesses against him. We have naturally considered whether any method could be devised whereby the identity of informants could be kept secret, while still enabling their evidence to be adduced in a court of law. The human difficulty is that nothing would convince them that there was no risk of their anonymity being betrayed. But we ourselves can find no practical way of keeping their identity secret if they gave evidence under any procedure which would fulfil the minimum requirements of trial to which we have just referred. One could contemplate the hearing of certain evidence *in camera* with the witness screened from sight, his name and address withheld, the exclusion of Press and public, and even without the physical presence of the accused himself. But at the

absolute minimum the lawyer of the accused would have to be present to hear the witness's evidence in chief and to cross-examine him and, for that purpose, to take instructions from the accused. Even if the witness's identity were not disclosed to the accused's counsel the details, elicited in cross-examination, of how the witness came to see or hear that to which he testified might often suffice to identify him to the accused. Apart from this, the accused's counsel would be gravely handicapped in testing the witness's credibility unless he were informed who the witness was. To disclose this to counsel but to prohibit him from communicating it to the accused would expose him to a conflict between his duty to his client and his duty to the State inconsistent with the role of the defendant's lawyer in a judicial process. In any event, in the current polarisation of political views in Northern Ireland no witness would believe that the lawyers defending a terrorist of either faction would not disclose to their client all they learnt about the identity of those who gave evidence against him.

Possible changes in the rules of evidence

21. We have considered whether the difficulties of proof resulting from the intimidation of those witnesses who would best be able to give direct oral evidence of the accused's involvement in terrorist activities could be overcome by changes in the rules of evidence or onus of proof which would dispose of the need to call them or to disclose their identity. The commonest offence committed by those who plan and direct but do not necessarily take part in terrorist acts is that of criminal conspiracy. This is also dealt with in Special Powers Regulation 24A. The Regulation makes it a criminal offence to become or remain a member of an organisation named in it as an "unlawful association" or to do anything to promote its objects. The organisations listed are those which advocate the use of violence for political ends. Among others, they include the IRA (both Official and Provisional) and a Loyalist terrorist organisation, the Ulster Volunteer Force (UVF). The Secretary of State has power to add to the list or to remove organisations from it. Persons who join an association which advocates the unlawful use of violence by its members, however laudable the political ends sought to be achieved by this means, thereby become parties to an agreement for the unlawful use of violence. The mere fact of doing so makes them guilty of a well-established crime at common law—that of criminal conspiracy. Provided that the power to name organisations as "unlawful associations" for the purpose of the Regulation is not abused by the Secretary of State, the Regulation does not extend the ambit of the common law offence of criminal conspiracy. The practical effect of listing a particular organisation as an "unlawful association" is evidential. It relieves the prosecution of the necessity to prove in court each time that an individual member of one of the named organisations is charged that its objects or the means by which it seeks to attain them are unlawful. On a charge of criminal conspiracy at common law, the evidence to establish this, though it be common knowledge, would have to be repeated in each case brought before the courts. The Regulation has one other effect upon the way in which an offence can be proved. This applies only when documents relating to an "unlawful association" are found in the possession of the accused or on premises in his occupation or control

or at which he is found or has resided. Once this has been proved, the onus of proving that he is not a member of the association is cast upon the accused. Apart from this the Regulation does nothing to facilitate proof by the prosecution by evidence which establishes beyond reasonable doubt that the accused was in fact a member of the "unlawful association".

22. We have therefore considered whether any additional evidential provision could be incorporated in Regulation 24A to solve the problem. In particular we have examined the practical value in Northern Ireland of a provision that evidence by a police officer of high rank of his belief that the accused was a member of the association should be evidence that the accused was in fact a member so as to cast upon him the onus of proving the contrary. This would satisfy the requirements of the European Convention if the police officer were obliged to answer questions on behalf of the accused as to the grounds of his belief in order to ascertain what weight could be attached to it in the face of a denial of his membership by the accused himself. This may well be possible elsewhere than in Northern Ireland. Unless the accused were aware of what it was he was actually alleged to have done to give rise to the belief that he was a member of the association, his own denial on oath would be likely to be the only means open to him to prove the negative fact that he was not a member. The need to preserve the lives of those who had provided the information upon which the police officer's belief was founded in our view makes it impracticable under existing conditions in Northern Ireland to permit the only kind of investigation of its validity which would be useful unless that investigation could be conducted in the absence of the accused and of his lawyers and without informing the accused of any matters which might reveal the sources from which information had been obtained about what the accused had actually done. But an investigation undertaken under those conditions would not satisfy the requirements. In the special and unique circumstances of intimidation now prevailing in Northern Ireland, we feel reluctantly compelled to reject any evidential solution on these lines as inappropriate to be applied in a regular court of criminal law.

23. Subject to technical rules about the admissibility of confessions which we discuss in a later section of this Report, it requires no express provision to entitle a court of law to draw, from statements made by the accused himself, or from his own conduct, the inference that he was a member of an unlawful association. This is part of the ordinary law of evidence. If the inference is a reasonable one, the statement or conduct of the accused from which it can be drawn, when proved, is "evidence" of his membership. But the fact that there is some "evidence" which points to the guilt of the accused is not enough to justify his conviction in a court of law. It must be strong enough to remove all reasonable doubt. So unless the *only* reasonable inference which can be drawn from his statement or conduct in the absence of any other fact to explain it is that he was a member of the unlawful association, proof of the statement or conduct is not of itself sufficient to justify his conviction.

24. An alternative approach which we have considered is to provide, by amendment to Regulation 24A, that certain kinds of conduct by an accused shall, unless the contrary is shown, be "proof" that he is a member

of an unlawful association. This would have the advantage of making it incumbent on the accused, if he is to avoid conviction, to go into the witness-box himself to give an explanation of his conduct which is consistent with his innocence and to be cross-examined about it. The difficulty is to define conduct, which could be proved by witnesses not vulnerable to intimidation, to which such a provision could fairly be applied. Regulation 24A already makes it an offence to do any act with a view to promoting or calculated to promote the objects of an unlawful association. Such conduct as contributing to or collecting funds for the association, inviting persons to become members of it, speaking in support of it or distributing statements or propaganda on its behalf, is already a substantive offence in its own right. Nothing we think is gained by making it also *prima facie* "proof" that he is also a member of the association.

25. There are two other kinds of conduct, not already covered by the Regulation to which we have given close consideration as the possible subject matter of an evidential provision such as that mentioned. The first is attendance at meetings of an unlawful association. In principle we see no objection to making attendance at a meeting of an unlawful association proof of membership, unless the contrary is shown. But in practice we doubt whether under the conditions now existing in Northern Ireland this would have much effect. Meetings are clandestine. Because of fear of intimidation of witnesses or compromise of sources of intelligence, it would not be possible to prove the attendance of the accused or the character of the meeting by calling as witnesses other persons who attended it. The attendance of the accused at the meeting might be proved by army or police witnesses who had observed him entering or leaving it, or by his being found there when it was raided by the Security Forces. But it would still be necessary to prove the character of the meeting and to do this would risk disclosure of intelligence sources. Though we would otherwise be willing to recommend a legislative provision on these lines, we do not think that it would provide any real solution to the problem of proving membership of a terrorist organisation.

26. Secondly, we considered whether it would be practicable to provide by legislation that the mere omission by the accused to deny a published report that he was a member of an unlawful association should be proof of his membership, unless the contrary were shown. The ordinary law of evidence allows such an inference to be drawn if it is proved that the report was drawn to his attention in circumstances in which the only natural thing for him to do, if it were false, would be to deny it. But to go further and to provide that the inference of membership *must always be drawn* from any such omission, unless the accused proves that he is not a member, seems to us to present great practical difficulties. There is the difficulty of defining what would constitute a published report so as to raise the presumption. A report might be published in a national newspaper or a radio or television programme or it might be made in a local newspaper circulating in an area in which the accused did not reside or even in one of the broadsheets published by an extreme Republic or Loyalist faction. Even if the provision were limited to reports published in national newspapers or on radio or television there would be difficulties in defining what kind of denial would suffice to rebut the presumption. Would it be necessary for the denial to

be made in writing to the publisher or would it be sufficient that the accused had denied it orally to some one or more of his friends? We can find no solution to these practical difficulties which could ensure that justice was done to all persons accused of the offence of becoming or remaining members of an unlawful association. In the result we are unable to recommend any change in the existing onus of proof of that offence under Regulation 24A, by reason of the fact that the accused has been referred to in a published report as being a member of an unlawful association named in that Regulation.

The need for detention

27. We are thus driven inescapably to the conclusion that until the current terrorism by the extremist organisations of both factions in Northern Ireland can be eradicated, there will continue to be some dangerous terrorists against whom it will not be possible to obtain convictions by any form of criminal trial which we regard as appropriate to a court of law; and these will include many of those who plan and organise terrorist acts by other members of the organisation in which they take no first-hand part themselves. We are also driven inescapably to the conclusion that so long as these remain at liberty to operate in Northern Ireland, it will not be possible to find witnesses prepared to testify against them in the criminal courts, except those serving in the army or the police, for whom effective protection can be provided. The dilemma is complete. The only hope of restoring the efficiency of criminal courts of law in Northern Ireland to deal with terrorist crimes is by using an extra-judicial process to deprive of their ability to operate in Northern Ireland, those terrorists whose activities result in the intimidation of witnesses. With an easily penetrable border to the south and west the only way of doing this is to put them in detention by an executive act and to keep them confined, until they can be released without danger to the public safety and to the administration of criminal justice.

28. Deprivation of liberty as a result of an extra-judicial process we call "detention", following the nomenclature of The Detention of Terrorists (Northern Ireland) Order, 1972. It does not mean imprisonment at the arbitrary Diktat of the Executive Government, which to many people is a common connotation of the term "internment". We use it to describe depriving a man of his liberty as a result of an investigation of the facts which inculcate the detainee by an impartial person or tribunal by making use of a procedure which, however fair to him, is inappropriate to a court of law because it does not comply with Article 6 of the European Convention. Lawyers, particularly English and Irish lawyers, tend to assume that the only safe evidence on which to convict a man upon a criminal charge is that which is admitted and elicited in accordance with the technical rules of procedure which are at present used in English and Northern Irish criminal courts and are stricter in favour of the accused than those followed in the Courts of other countries in Europe. But in fact there may be material available to the security authorities which would carry complete conviction as to the guilt of the accused to any impartial arbiter of common sense, although it is based on statements by witnesses who cannot be subjected to questioning by lawyers on behalf of the accused or even produced for examination by the arbiter himself.

29. If there is any process by which members of terrorist organisations can be identified with certainty their detention in custody does not involve the punishment of an innocent man, or even one who is guilty of what could properly be called only a "political crime". It means depriving of his liberty albeit by an extra-judicial process, a criminal who has committed an offence which has been punishable by the common law of England and Northern Ireland for upwards of two centuries before the current emergency arose.

30. Although everyone who by virtue of his membership of such an organisation agrees to do anything to encourage or assist in the use of violence in the attainment of its political ends becomes a party to the crime of conspiracy, there may be varying degrees of culpability between different parties to the conspiracy depending upon the role which each has agreed to play in the organisation and upon what, if anything, each has in fact done in performance of his agreement. In the case of an ordinary trial in a court of law upon a charge of criminal conspiracy at common law or of the similar statutory offence under Regulation 24A account can be taken of the extent of the culpability of the individual accused, in the sentence imposed upon him by the court. This need not necessarily involve imprisonment. In the case of detention under the new Detention of Terrorists (Northern Ireland) Order, 1972, however, the only equivalent of punishment which a Commissioner or the Detention Appeal Tribunal can sanction is deprivation of liberty. On the other hand, mere membership of an "unlawful association" does not result in the member being liable to be subject to a detention order. The Commissioner or Tribunal must be satisfied that the detainee has been personally concerned in the use or attempted use of violence for political ends or the direction, organisation or training of others for the purpose of using violence for those ends, and also that his detention is necessary for the protection of the public. That is a much more stringent test of culpability than that required to be satisfied in order to convict a person of the offence of becoming or remaining a member of an "unlawful association" under Regulation 24A.

31. The identity and functions of the responsible officers of many of the operational "battalions" and "companies" in which Provisional IRA, at any rate, is organised are widely known. They can often be verified by the security forces from a plurality of reports obtained from separate sources independent of one another and by statements elicited from self-confessed members of the Provisional IRA. It is possible that some of the information obtained is wrong. Its probative value is cumulative and derives from such opportunity there may be to check and cross-check information from one source by similar information from other sources, to eliminate the possibility of collusion between different informants or the possibility that information coming from a plurality of informants personally unknown to one another can yet be traced back to a single common source.

32. It is now recognised by those responsible for collecting and collating this kind of information that when internment was re-introduced in August, 1971, the scale of the operation led to the arrest and detention of a number of persons against whom suspicion was founded on inadequate and inaccurate information. Such evidence as we have heard leads us

to believe that the security authorities have learnt the lessons of this experience and that the danger of their recommending detention on inadequate evidence is now greatly reduced. We think, however, that it is a valuable safeguard against abuse of the power of detention that under the new Order the security authorities' case against a suspected terrorist has to be submitted to the consideration of some independent and impartial person or tribunal before any final decision to keep him in detention is reached. We have no reason to think that since the original Advisory Committee to hear applications for release from internment was first set up in September, 1971, there has been any intentional misuse of the powers of detention by the security authorities in Northern Ireland upon whose advice the Executive has to rely in taking the initial step. But those human beings charged with the task of suppressing terrorist organisations and preventing and detecting terrorist crimes are working under tremendous pressure, often in personal peril. It is only natural that occasional errors of judgment may be made as to the probative strength of the material inculcating a particular suspect. If these occur the best corrective is to bring to bear upon the case fresh minds not subject to similar pressures or perils. The very fact that those responsible for obtaining and collating the inculpatory material know that they will be called upon to justify its sufficiency is in itself a strong deterrent to their acting on suspicions which cannot be supported by convincing facts.

33. Nevertheless, however slight the risk of mistake by the Commissioners and the Detention Appeal Tribunal appointed under the Detention of Terrorists (Northern Ireland) Order, their proceedings must of necessity take place in private and the reasons which in the current atmosphere of terror make it impossible to call witnesses to testify in open court are likely to deprive these tribunals too of the opportunity of questioning the actual persons from whom information inculcating the detainees was obtained, although they may have an opportunity, not available to an ordinary court of law, of learning from those by whom information about the accused was obtained, facts which bear upon the reliability of their sources but which could not safely be disclosed in the presence of the accused or his lawyers. Even these facts, however, must fall short of disclosing the actual identity of the source. We recognise that the procedures available to these tribunals can never appear to be as complete a safeguard that none but the guilty will be deprived of their liberty, as in the safeguard which is provided by a public trial in a court of law, at which the actual witnesses can be produced in person and their evidence tested by cross-examination on behalf of the accused.

34. That is why although we are satisfied that public safety will still require resort to detention by extra-judicial process, we have thought it our duty to consider to what extent changes in criminal procedures which do not conflict with the minimum requirements to which we think criminal courts of law in Northern Ireland ought to continue to adhere, would enable some crimes which can at present be dealt with only by detention to be disposed of by public trial in courts of law. These we discuss in the succeeding sections of this Report.

CHAPTER 5

MODE OF TRIAL

35. Hitherto serious terrorist crimes, as well as other crimes, have been all tried by jury. It is fair to say that we have not had our attention drawn to complaints of convictions that were plainly perverse and complaints of acquittals which were plainly perverse are rare. But an important factor in the absence of perverse convictions has been the readiness of the judge in Northern Ireland, even before the present emergency, to withdraw the case from the jury if he himself has any doubt as to the guilt of the accused. This power appears to us to have been exercised in recent months in Northern Ireland much more widely than it would be by any judge in England. In cases in which it is used its effect is to substitute for trial by jury, trial by judge alone.

36. The rational basis of trial by jury is that a citizen should be tried by 12 of his fellow citizens selected at random. This is not practicable in the case of terrorist crimes in Northern Ireland. The threat of intimidation of witnesses which we have already described extends also to jurors, though not to the same extent. It is a serious one, particularly to those who live in so-called "Catholic areas" when a Republican terrorist is on trial, and, more important, is the widespread fear of it of which we have had ample evidence. A frightened juror is a bad juror even though his own safety and that of his family may not actually be at risk. This has made it necessary in cases of this kind, either by choice of venue or use of challenge by the prosecution to pick the jurors from some different area where they are less vulnerable to intimidation. Because of the way in which "Catholics" and "Protestants" are concentrated geographically this results in its being composed predominantly of "Protestants", of whom the great majority have Loyalist sympathies. The converse might apply to the trial of Loyalist terrorists if the threat of Loyalist intimidation were to become widespread. But this is only one of the factors which militate against truly random selection. Apart from the fact that Protestants outnumber Catholics by about two to one, the property qualification for jury service is more likely to be possessed by Protestants than Catholics. Finally, the right to peremptory challenge of individual jurors has traditionally been exercised by accused persons more vigorously in Northern Ireland than in England. So has the corresponding right of the prosecution. With the exacerbation of partisan feeling by the emergency, both are exercised even more extensively than before. This we think cannot be avoided. The result of all these factors is that juries who have tried Republican terrorists, who until recently have been almost the only detected perpetrators of terrorist crimes, have been juries the great majority, if not all, of whom have been Protestants.

37. While the danger of perverse convictions by partisan juries can in practice be averted by the judge, though only at the risk of his assuming to himself the role of decider of fact, there is no corresponding safeguard in a jury trial against the danger of perverse acquittals. If circumstances arose in which there were a significant proportion of unjust acquittals the

need to make use of detention instead of trial by jury in a court of law would grow. We think that matters have now reached a stage in Northern Ireland at which it would not be safe to continue to rely upon methods hitherto used for securing impartial trial by a jury of terrorist crimes, particularly if the trend towards increasing use of violence by Loyalist extremists were to continue. The jury system as a means for trying terrorist crime is under strain. It may not yet have broken down, but we think that the time is already ripe to forestall its doing so.

38. We recommend that for the Scheduled Offences in Parts I and II trial by judge alone should take the place of trial by jury for the duration of the emergency. So should it for offences in Part III in respect of which the Director of Public Prosecutions (DPP) has issued his certificate. Though this is not our reason for recommending it, an incidental benefit should be to shorten trials so as to enable more cases to be dealt with by the same number of judges and to reduce the current delay between committal and trial. Certain of the other changes in the procedure for dealing with Scheduled Offences which we propose later could also be applied more easily if the trial were by judge alone.

39. We have considered carefully whether trial without a jury of cases on indictment ought to be undertaken by a single judge or by two or more sitting together. We think that in any event the jurisdiction should be confined to those judges who are already qualified to sit on trials upon indictment and are experienced in this class of judicial work; that is to say, members of the Court of Appeal and the High Court and Judges of the County Courts. The total strength of the Appeal and High Court benches is seven. There are the same number of County Court Judges. This, in itself, would render impracticable trial by a plurality of judges in any significant number of cases—and terrorist crime at present constitutes the bulk of the calendar of indictable crime. But we should in any event recommend trial by a single High Court Judge or, in the less serious cases, by a single County Court Judge, in preference to a collegiate trial. Non-jury trials in civil actions are always conducted by a single judge alone. Our oral adversarial system of procedure is ill-adapted to the collegiate conduct of a trial of fact. In criminal proceedings, in particular, immediate rulings on admissibility of evidence and other matters of procedure have constantly to be made by the single judge when sitting with a jury. It would gravely inconvenience the progress of the trial and diminish the value of oral examination and cross-examination as a means of eliciting the truth, if a plurality of judges had to consult together, albeit briefly, before each ruling was made.

40. The existing rights of appeal should apply to the decision of a judge sitting alone. If our proposal for trial of certain classes of cases by a judge alone is adopted, we think that it is best left to the Northern Irish judiciary to evolve an appropriate form of judgment to be delivered when the judge's finding of guilty or not guilty is pronounced. We do not think that it need be long or incorporate a summary of the evidence he has heard. It should however state, however briefly, the various issues in the case to which he has applied his mind so as to indicate for the assistance of the Court of Criminal Appeal how he has directed himself upon the law relating to the offence with which the accused is charged.

41. If our proposal is adopted for trials upon indictment, the mode of trial, viz. trial by judge alone or trial by jury, will depend upon whether or not the offence with which the accused is charged is a Scheduled Offence. We do not think that counts for Scheduled and non-Scheduled Offences should be joined in the same indictment; but there are cases in which the law permits conviction of a lesser offence than that stated in the indictment. It should be made clear in any legislative provision designed to give effect to our recommendation that the jurisdiction of a judge sitting alone to try a charge of a Scheduled Offence extends to convicting the accused of any lesser offence of which he could be convicted on that indictment, even though that lesser offence is not included in the Schedule.

CHAPTER 6

ARREST

42. The law of arrest in Northern Ireland, as in England, requires that a person who is arrested should be made aware of the fact that he is under arrest and also should be informed promptly of the reason why he is being arrested. In normal times arrests are in practice made by police officers trained in the necessary formalities and are effected in circumstances where there is no difficulty in complying with them. If a person arrested is not informed promptly of the reason for his arrest or is informed of the wrong reason his arrest is unlawful and so is any physical restraint or threat of restraint used to prevent his escape. The consequence of this is not only that the arrestor renders himself liable to a civil action for damages for false imprisonment by the person whom he has arrested, but also that any physical restraint he uses to prevent that person escaping amounts to a criminal offence of assault on the part of the arrestor himself. Furthermore any reasonable force which that person uses to effect his escape is lawful and those who assist him to do so do not commit any offence themselves.

43. The requirement that a person arrested should be informed of the reason for his arrest is an appropriate safeguard of the liberty of the subject in normal times when arrests can be made by trained police officers, without hindrance by bystanders, of persons found at the scene of a crime or whose identity is known to them. But this is very different from the only way in which the arrest of most terrorists can be effected in extremist strongholds in Northern Ireland.

44. Here it is not practicable in present conditions for the initial arrest of a suspected terrorist to be made by a police officer. It can only be made by soldiers either when in the course of an armed patrol they believe they recognise a wanted man in the streets or in a passing vehicle or when, as a result of information received, they conduct a surprise search of premises on which terrorists are thought to be present. In the latter case there are often a number of people on the premises whose identities are not known to members of the search party. In either case the arrest is liable to be hindered by crowds of sympathisers, including women and children, hurling stones and other missiles and possibly carried out under fire from snipers.

45. It is, we think, preposterous to expect a young soldier making an arrest under these conditions to be able to identify a person whom he has arrested as being a man whom he knows to be wanted for a particular offence so as to be able to inform him accurately of the grounds on which he is arresting him. It is impossible to question arrested persons on the spot to establish their identity. In practice this cannot usually be ascertained until they have been taken to the safety of battalion headquarters. Even here it may be a lengthy process, as suspects often give false names or addresses or, giving their true names, which are often very common ones, assert that some relation or other person of the same name is the real person who is "wanted" for a particular offence. It is only when his identity has been satisfactorily established that it is possible to be reasonably certain of the particular ground on which he was liable to arrest and to inform him of it.

46. Yet the courts in Northern Ireland apply the ordinary common law rules as making it necessary for the soldiers who first apprehend the suspect to inform him accurately of the ground on which he is being arrested. The courts have treated mistakes as to this as rendering the arrest unlawful; with the serious legal consequences to which we have already drawn attention.

47. The difficulties which confront the ordinary soldier are further increased by the fact that there are alternative powers under which army personnel may make arrests. The first is conferred by Special Powers Regulation 10. This is arrest of a person for the purpose of interrogation and authorises his being kept in detention for not more than 48 hours. The person arrested need not himself be suspected of an offence but he must be an identified person whom the army has been specifically authorised by the RUC to arrest. The second is conferred directly on army personnel by Regulation 11(1). It authorises the arrest of persons suspected of four different alternative offences. As a result it has been found necessary to issue all soldiers with a card setting out five different grounds for arrest from which they have to select, under the conditions already described, the correct formula to use on arresting an unidentified person "lifted" (to use the soldier's own word) in suspicious circumstances. The penalty for any mistake is to make the arrest unlawful.

48. We are satisfied that this is a serious handicap to the security forces in performing their difficult and dangerous duty of protecting the life and property of innocent citizens in Northern Ireland. Reluctant though we are to propose any curtailment, however slight, of the liberty of any innocent man we think that it is justifiable to take the risk that occasionally a person who takes no part in terrorist activity and has no special knowledge about terrorist organisations should be detained for such short time as is needed to establish his identity, rather than that dangerous and guilty men should escape justice because of technical rules about arrest to which it is impracticable to conform in existing circumstances.

49. We accordingly recommend that steps should be taken by legislation (1) to confer upon members of the armed services:

- (a) Power to arrest without warrant and to remove to any police station or to any premises occupied by the armed forces any person suspected of having committed or being about to commit any offence, or having information about any offence committed or about to be committed by any other person; and
 - (b) Power to detain any such person in custody for a period of not more than four hours for the purpose of establishing his identity.
- (2) It should be an offence to refuse to answer or to give a false or misleading answer to any question reasonably put for that purpose by a member of the armed forces or a police officer.
- (3) Arrest and detention for up to four hours under the above powers should not be unlawful by reason of the fact that no reason was given or a wrong reason given for the arrest.

- (4) A person arrested or detained under the above powers should be deemed to be in lawful custody, so as to make it an offence to resist arrest or to escape from custody or to aid or abet any person attempting to resist or to escape.

50. Nothing that we propose to simplify the formalities of arrest by members of the armed services should be understood as countenancing any relaxation of their common law obligation to use no more than that amount of force that is reasonably necessary in all the circumstances to effect the arrest and hold the arrested person in custody. We contemplate that when the arrested person's identity has been established satisfactorily, he should be released unless wanted by the police either on suspicion of having himself committed an offence or for interrogation as a person suspected of having knowledge of any terrorist organisation or activities. If it is intended to keep him in custody on either grounds he should be re-arrested either by the military police or by a police officer and informed of the ground for his further detention in custody. Our proposal does not involve that questioning prior to re-arrest should be directed to any other purpose than establishing the identity of the person arrested.

CHAPTER 7

BAIL

51. In Northern Ireland applications by a person charged with a criminal offence for release on bail pending committal or trial are made in the first instance to a court of summary jurisdiction, which for this purpose may consist of a Resident (*i.e.* professional) Magistrate (RM) or a Justice of the Peace. The latter is a layman but, unlike an English JP, he has no jurisdiction to try cases. His jurisdiction is limited to dealing with applications for remands. There is no appeal from a decision to grant a remand on bail. There is, however, what is in effect, though not in form, an appeal from the refusal of bail by a court of summary jurisdiction. It takes the form of a direct application for bail to a High Court Judge.

52. Resident Magistrates sitting in the same court day after day are in the front line of danger among the judiciary. Of the four RMs who sit in Belfast, one has been shot and very seriously wounded. Attempts have been made to bomb the homes of others, in two cases successfully. Justices of the Peace live in the communities served by the court in which they sit. They are exposed to similar risks and, even more than Resident Magistrates, are subject to local pressures.

53. The grant or refusal of bail is a matter of discretion in the sense that it depends upon the appreciation by the individual RM or JP to whom the application is made of the weight to be attached to the information then available to him as establishing one or other of the grounds which are treated in Northern Ireland as justifying remand in custody. There is thus room for variation in practice between one RM or JP and another, even in ordinary times when they are not subject to the fears, tensions and pressures resulting from the present emergency. Furthermore, the practice of the courts in Northern Ireland differs from that of the courts in England in restricting the grounds for refusal of bail to two. The first is that there is a likelihood that the accused, if released, would not present himself for trial. The second is that there is a likelihood that if at liberty he would interfere with witnesses for the prosecution. The onus of establishing one or other of these grounds lies upon the prosecution at the time of the application, which may take place at an early stage in their enquiries. The likelihood that if at liberty the accused will continue to commit other offences is, surprisingly, not treated by the Northern Irish courts, at any rate avowedly, as a ground for refusal of bail, although it is one of the commonest grounds upon which bail is refused in England. The logical justification for this is that the police ought to be, and are, able themselves to prevent him from committing any further crimes. But this is wholly unrealistic as respects terrorist crimes today.

54. In the result bail is granted in Northern Ireland much more freely and indiscriminately than it is currently granted in England, and this even in the most serious of terrorist offences and sometimes in circumstances where it seems inconceivable that it would be granted by an English court; for a

resolute member of a terrorist organisation is, of all criminals, most likely to continue his participation in its criminal activities if he is at liberty, and, for the reasons stated at the outset of our Report, the risk which he runs of the Crown being able to produce witnesses willing to testify in any court of law to his participation are reduced to a minimum by the fear of reprisals. It not only has a serious effect upon the morale of the troops to see a known terrorist, whom they have arrested, perhaps at the risk of their own lives, the week before, walking the streets, a free man in the area from which he has been operating, but it also exposes the public to further risk from terrorist outrages which we regard as quite unjustifiable.

55. We consider that so long as the current emergency continues the only remedy for this state of affairs is to provide by legislation that in respect of persons charged with any Scheduled Offence in Part I or II:

- (1) remand in custody by courts of summary jurisdiction should be mandatory;
- (2) bail should only be granted by a judge of the High Court upon the application of the person charged;
- (3) bail should be refused unless the judge is satisfied :
 - (a) that there is no risk that if the applicant is released from custody pending his trial (i) he will fail to surrender to his bail at the time and place fixed for his trial, OR (ii) there will be any interference by him or on his behalf with any witness for the prosecution, OR (iii) he will commit any criminal offence : AND ALSO
 - (b) that either (i) exceptional hardship would be caused to the applicant if he were to be detained in custody or (ii) he has been held in custody for not less than 90 days and has not yet been committed for trial or, having been committed for trial, he has been held in custody for not less than 90 days thereafter;
- (4) the judge should have power to impose conditions upon any grant of bail.

This would also apply to offences in Part III in respect of which the DPP had issued a certificate.

56. The most serious offences to which we recommend that this provision should apply *in toto* are listed in Part I of the Schedule of Offences. As respects the offences listed in Part II bail should be granted if the judge is satisfied of the matters mentioned in 3(a) alone. There would be no obligation on the applicant to satisfy him of the matters set out in 3(b) (i) or (ii).

57. In 3(b) (ii) we have provided for a maximum period of remand in custody of 90 days before committal and another 90 days after committal before the applicant is relieved of the obligation of satisfying the judge of exceptional hardship. Owing to congestion of the courts' calendar of indictable offences due to terrorist activities, five months is currently the *average* interval between charge and trial. But we would hope that arrangements could be made to give priority to committal and trial of prisoners held in custody over those admitted to bail, so that this period could be reduced.

CHAPTER 8

THE CONDUCT OF THE TRIAL

58. Although to substitute for trial by jury trial by judge alone would reduce the risk that an impartial trial of offences arising out of terrorism could not be obtained in courts of law, it would do nothing in itself to solve the problem of intimidation of witnesses, which restricts the terrorist crimes which can be brought to trial to those in which the guilt of the accused can be established by the oral evidence of army or police witnesses, physical evidence or an admissible confession by the accused. If the number of cases in which this could be done were increased the need to make detention orders in respect of those who actually commit terrorist crimes would be correspondingly reduced.

59. There are two technical rules of English and Northern Irish criminal law and procedure which greatly enhance the difficulty of obtaining convictions of guilty men in the exceptional circumstances which now exist in Northern Ireland. They relate to the onus of proof of possession and to the admissibility of confessions. We call them "technical rules" because they are peculiar to English law and legal systems which derive from it. No similar rules are to be found in legal systems based on the civil law which are in force in other European countries nor are they called for to satisfy the requirements of the European Convention. But they are also technical in a much more fundamental sense: they are not essential for the protection of the innocent. They are both aspects of the right of the accused not to give any explanation of his conduct either at his trial or before it. But we are convinced that as they are currently applied by the Courts in Northern Ireland they result in the acquittal of significant numbers of those who are undoubtedly guilty of terrorist crimes.

60. The knowledge that the application of these rules is likely to result in the acquittal of an arrested person whom the security authorities know to be a dangerous terrorist from information obtained from other witnesses who cannot be produced in court because of intimidation, makes it necessary to fall back upon detention in cases where a conviction could have been obtained as a result of a fair trial in open court in accordance with a procedure which in the emergency which now exists in Northern Ireland any fair-minded man in England or elsewhere in Europe would regard as just and as appropriate to a court of law.

Onus of proof of possession

61. We would not seek to abrogate the rule that on a criminal charge the prosecution must prove its case or, as it is expressed in Article 6(2) of the European Convention: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law". This rule is not breached by a provision that upon proof by the prosecution of particular facts capable of implicating the accused in the offence with which he is charged the onus shall lie upon him to furnish an explanation of them which is consistent with his innocence. There are examples on the statute books, most of them relating to offences in which the intent with which a particular

act was done by the accused or the fact that the purpose for which it was done was unlawful, is a necessary ingredient of the offence. Upon proof by the prosecution that the accused did that act the onus is cast upon the accused to prove that his intent was not that described in the offence but was a lawful one.

62. The principal weapons of terrorism in Northern Ireland are firearms, explosives and incendiary devices. Sometimes it is possible for the security forces to catch red-handed a terrorist when he is using them. But many terrorist activities take place at night, immediate capture of the terrorist is hindered by rioting crowds, by sympathisers, and reliable identification by army witnesses is extremely difficult. Because of this the commonest charges which can be brought against terrorists and proved by army or police witnesses are of being in possession of firearms, ammunition or explosives, etc. These charges arise out of the discovery of these lethal objects by the army or the police in the course of searches of premises or vehicles or as a result of stopping people in the streets for questioning.

63. Legislation in the United Kingdom as well as in Northern Ireland has long provided that if the accused is found to be in possession of firearms or explosives the onus of proving that he had them for a lawful purpose shall lie on him.

64. The practical effect of these provisions upon the conduct of the trial is that once possession of the lethal object by the accused is proved by the prosecution it becomes incumbent on the accused in order to escape conviction, to go into the witness box himself and explain the circumstances in which he came to be in possession of the lethal object and satisfy the court that this was for some lawful purpose. He may succeed or fail in doing this. If he succeeds he is, quite rightly, entitled to acquittal. If he vouchsafes no explanation or one which when tested by cross-examination the court does not believe, he is convicted. In this respect we see no need to alter the present law.

65. But this still leaves the whole onus of proof of "possession" upon the prosecution. Possession of an object in criminal law involves two elements (1) the physical presence of the object in a place where the person accused of being in possession of it is able to exercise control over it; and (2) knowledge on the part of the accused of its actual presence, or knowledge of the likelihood of its being present coupled with a deliberate refraining from finding out for certain whether or not it is.

66. No difficulty arises in proving the first element by the evidence of army or police witnesses who conducted the successful search. But in the circumstances in which firearms and explosives are found in the current emergency in Northern Ireland, proof by the prosecution of the necessary element of knowledge is often impracticable under the existing law.

67. Arms, ammunition and explosives are usually found concealed in vehicles in which several people are travelling, on premises which several people occupy, or dropped or discarded by one of a group of people found in the street at night by an army patrol. The circumstances are such that it is probable that all of them knew of the presence of the lethal object. It is certain that at least one of them did. All that is not certain is which of

them knew. All doubt might be resolved if each were called upon to give an explanation of the circumstances in which he came to be where he was in relation to the object found and as to his means of knowledge of its presence there, and his explanation was exposed to the test of cross-examination.

68. Yet, as the law now stands, all are entitled to be acquitted at the conclusion of the prosecution's case without any one of them ever going into the witness box, though it may be certain that this involves the acquittal of at least one guilty man. This has been the ground upon which judges in Northern Ireland in cases of these kinds have ruled that there was no case fit to go to the jury as against any one of the accused.

69. A striking illustration is provided by a case in which a gun was found in the bedroom in which three brothers slept. It was hidden under some male clothing on top of a chest of drawers. All three brothers were in the room when the gun was discovered by the police. All three disclaimed any knowledge of its presence. At the trial of the three accused the judge allowed the prosecution's case to go to the jury. None of the accused gave evidence in his own defence, so none could be cross-examined. Each elected to make an unsworn statement from the dock. It is a matter of no surprise that the jury convicted all three of them. The Court of Criminal Appeal set aside the convictions on the ground that there was in law not sufficient evidence against any one of the accused to justify his allowing the case to go to the jury.

70. While so much suffering is caused to innocent citizens by terrorist use of firearms and explosives in Northern Ireland, we do not think it tolerable that the scales should be weighted so heavily in favour of guilty men. The remedy which we recommend to deal with the three common types of cases of arms, ammunition or explosives is an amendment of the existing law so as to provide that arms, ammunition or explosives found on any premises shall be deemed to be in the possession of the occupier of those premises and of any person residing at or found on those premises at the time of the discovery unless he proves that he did not know and had no reason to suspect that any arms, ammunition or explosives were there. A similar provision is required in respect of persons present in any vehicle which contains arms, ammunition or explosives. To meet the case of firearms or explosives being discarded by an unidentified member of an identifiable group of persons in the street, a provision is required that any person found in the company of any other person who is carrying arms, ammunition or explosives shall be deemed to be in possession of them unless he proves that he did not know and had no reason to suspect that such other person was carrying them.

71. The effect of this change in the law would be to make it incumbent upon persons in the categories mentioned to go into the witness box and give an explanation of their own conduct and the reasons for their lack of knowledge or suspicion of the presence of the lethal objects that were found. If the explanation given by any one of them, after being tested by cross-examination, satisfied the court that it was more likely to be true

than not he would be entitled to be acquitted. If it did not or if he refused to proffer any explanation he would be convicted. This would leave untouched the common law defence that the accused was acting under duress: that he was compelled to store the lethal objects against his will by imminent threats to his safety or that of his wife or family.

72. What we recommend falls far short of the creation of an "absolute offence". It is not unfair in the present emergency to require people to take reasonable precautions to avoid getting involved with terrorists in their activities. We are satisfied that the change in the law as to the onus of proof which we propose is the least drastic remedy for its manifest existing defects. We do not think that there is any serious risk that it would result in the conviction of any innocent man especially as, if our previous recommendation is accepted, the trial will be by judge alone. We believe that it will facilitate the conviction of the guilty and in this way reduce the need to resort to the alternative of detention.

Admissibility of confessions

73. The highly technical rules of English law upon the admissibility in evidence of statements made by the accused before his trial have their origin at a period when the accused was prohibited from giving evidence at his own trial. In this respect the law in England was not altered until 1898 and it continued to apply in Northern Ireland until as late as 1930.

74. To the ordinary man it would seem that the most cogent evidence that a person had done that which he was accused of doing was his own admission that he had done it, unless there were some reason to suppose that he was inculcating himself falsely. All over the world courts act on this assumption daily when they convict the accused upon his own plea of guilty.

75. A plea of guilty is an inculpatory admission made by the accused directly to the court that tries him. If he does not plead guilty and the prosecution calls witnesses to prove that the accused made an inculpatory admission before the trial, there are two matters for enquiry at the trial itself which are relevant to the guilt of the accused. The first is whether the alleged inculpatory admission was in fact made. The second is whether, if it was made, there is any reason to suppose that the accused was inculcating himself falsely.

76. These are the two questions which the jury have to decide in every case in which an alleged confession by the accused is adduced in evidence against him. There may be no dispute about them; but if there is any challenge by the accused upon either, the whole of the circumstances in which the confession was made are investigated in open court. Witnesses who heard or recorded the confession are called by the prosecution and exposed to cross-examination on behalf of the accused; the accused himself can give evidence on oath of his own version of the matter and is in turn subject to cross-examination. He can call witnesses, if there are any, to support him. Decisions on this kind of issue are of daily occurrence in criminal trials in England. Juries, and magistrates in summary cases, do not usually find

any difficulty in determining whether there is any reasonable doubt either that the alleged confession was in fact made (*i.e.* that the accused has not been "verballed") or that it was true. If they have any doubt on either of these matters their duty is to resolve it in favour of the accused.

77. We do not suggest any alteration in this practice. If the accused wishes to complain that he was "verballed" or induced by any means whatever to say something inculpatory of himself which was not true, he should be entitled to ventilate in open court the circumstances in which the alleged confession was obtained. This is the best safeguard against possible abuse of their powers of questioning by the police or by the army.

78. The ability of the accused to challenge effectively the reliability of the prosecution's evidence about a confession alleged to have been made by him was severely handicapped so long as the law prohibited him from giving evidence on oath in his own defence. He was restricted to making an unsworn statement from the dock. Since his version of the matter was not backed by the sanction of an oath nor subject to the test of cross-examination, it was unlikely to carry the same weight with the jury as sworn evidence to the contrary given by witnesses for the prosecution. In the result this period saw a development of the law which had the effect of interposing a preliminary question to be decided by the judge before evidence of a disputed confession was admitted before the jury at all. Unless the judge ruled that the confession was "admissible" it never went before the jury for them to decide whether it was reliable evidence of the accused's guilt. If he did rule that it was "admissible", it still remained for the jury to determine the two questions relevant to the accused's guilt, *viz.* whether the alleged confession was in fact made and, if so, whether there was any reason to suppose that the accused was inculcating himself falsely.

79. No doubt in origin the concept of "admissibility" was introduced to compensate the accused for the handicap under which he then laboured in challenging the reliability of an alleged confession as evidence of his guilt. It was designed to prevent confessions ever going before the jury at all if they had been obtained in circumstances in which there was any risk that they might be untrue. But as the law has developed since this handicap on the accused has been removed, the test of "admissibility" of confessions has become subject to a number of technical rules which are no longer directed to the question whether a confession is reliable evidence of the guilt of the accused. These technical rules are the result in part of judicial decisions of the courts in England and in Northern Ireland in particular cases, and in part of the so-called "Judges' Rules", which now differ in the two countries.

80. Judicial decisions first introduced and later refined the legal concept of "voluntariness". Today it bears a highly technical meaning. Its origin dates back to the 18th century before the formation of a regular police force charged with the duty of detecting and preventing crime. Its original purpose was to exclude false confessions extorted by threats or promises of favours if the accused would confess to being guilty. As it developed, however, the risk that the confession might be false ceased to play a significant part in the concept. If applied in strict accordance with certain judicial dicta on

this topic—which it seldom is in practice in English courts—it would operate to exclude all statements made by the accused after anything had been said or done which might be likely to make him more willing to disclose truthfully what he had done than to keep quiet about it.

81. This is also reflected in the Judges' Rules as they were adopted in England up to 1964. This version of the Judges' Rules, though it has been changed in England, is still followed in Northern Ireland. The rules deal primarily with the questioning of suspects after they are in custody and are designed to discourage this. If applied strictly they would have the effect of rendering inadmissible any statement made by the accused after his arrest unless it was volunteered by him upon his own initiative without any persuasion or encouragement by anyone in authority.

82. Guilty men do not usually do this. If left to themselves they would prefer to remain silent. The rigour of the Judges' Rules about questioning suspects after they are in custody was modified in England, though not in Northern Ireland, in 1964. In practice a way round had been found in both countries by questioning at the police station suspects who had not been formally arrested but were euphemistically described as "helping the police in their enquiries". The fact that it was incredible that a confession only obtained at the end of several sessions of prolonged questioning would have been volunteered at the outset by the subject of his own initiative was not in practice treated by the judges as rendering it "inadmissible".

83. Today in Northern Ireland in the case of terrorist crimes the only opportunity of questioning suspects arises after they have been arrested, generally by the army, under the powers of arrest conferred by Regulations made under the Special Powers Act. Incontrovertibly they are in custody when questioned and the Judges' Rules currently in force in Northern Ireland apply to the manner in which they are questioned. Although not strictly rules of law but rules of general guidance from which the judge who tries a case has a discretion to depart, they appear to have been applied in Northern Ireland with considerable rigidity as if they were a statutory requirement from which no departure is permissible. In a recent decision the Court of Criminal Appeal of Northern Ireland has ruled that the mere creation by the authorities of any "set-up which makes it more likely that those who did not wish to speak will eventually do so", renders involuntary and therefore inadmissible in a court of law any confession subsequently made even though the actual statement sought to be relied upon was made in writing after the accused had been expressly cautioned and notwithstanding that its contents are such that no man who was not guilty could have had knowledge of the facts that it discloses.

84. If human lives are to be saved and destruction of property prevented in Northern Ireland, it is inescapable that the security authorities must have power to question suspected members of terrorist organisations. Only the innocent will wish to speak at the start. The whole technique of skilled interrogation is to build up an atmosphere in which the initial desire to remain silent is replaced by an urge to confide in the questioner. This does not involve cruel or degrading treatment. Such treatment is regarded by those responsible for gathering intelligence as counter-productive at any rate in Northern Ireland, in that it hinders the creation

of the rapport between the person questioned and his questioner which makes him feel the need to unburden himself. But as the rules as to admissibility of confessions have been interpreted in Northern Ireland the mere fact that the technique of questioning is designed to produce a psychological atmosphere favourable to the creation of this rapport is sufficient to rule out as evidence in a court of law anything which the accused has said thereafter.

85. This has two consequences. The first is that it prevents those interrogated from being brought to trial for self-acknowledged crimes. The security authorities thus have no alternative but to order their detention without trial. This leaves the reliability of their confessions, if disputed, to be considered in private by Commissioners appointed under The Detention of Terrorists (Northern Ireland) Order, 1972. The second is that if the suspect does dispute that he made an alleged confession or that he was induced, by ill-treatment or any other means, to inculcate himself falsely, he is deprived of the opportunity of having his allegations investigated in a public hearing by a court of law with all the safeguards of confrontation and cross-examination of witnesses which a criminal trial provides.

86. We would not condone practices such as those which are described in the Compton Report (Cmnd. 4823) and the Parker Report (Cmnd. 4901) as having been used in the crisis resulting from the simultaneous internment of hundreds of suspects in August 1971. The use of any methods of this kind have been prohibited for many months past. As already mentioned they are, in any event, now regarded as counter-productive. Certainly, the official instructions to the RUC and the army are strict. So are the precautions taken to see that they are strictly observed. There is stationed on permanent call at the centre where suspects are questioned by the police an army medical officer who is not attached to any of the operational units stationed in Northern Ireland, but is sent out on a rota from England for a period of four to six weeks. He conducts a thorough medical examination of each suspect on arrival in the absence of the police and a similar examination at the conclusion of the questioning. He informs the suspect that if he wishes he will be allowed to see the doctor at any time while he is at the centre. The possibility of ill-treatment which injures the suspect physically or mentally going undetected by the doctor is remote. We should make it clear that in drawing attention to these safeguards we are not suggesting that the Royal Ulster Constabulary are using methods of interrogation which we ourselves should regard as at all improper having regard to the gravity of the situation with which they are faced.

87. We consider that the detailed technical rules and practice as to the "admissibility" of inculpatory statements by the accused as they are currently applied in Northern Ireland are hampering the course of justice in the case of terrorist crimes and compelling the authorities responsible for public order and safety to resort to detention in a significant number of cases which could otherwise be dealt with both effectively and fairly by trial in a court of law.

88. We have considered the draconian remedy, that all inculpatory admissions alleged to have been made by the accused should be "admissible" in evidence, and that a court of law should confine its

attention to the two questions relevant to the guilt of the accused, *i.e.* whether the alleged admission was in fact made and, if so, whether the circumstances in which it was made give any reason to suppose that the accused may have been inculcating himself falsely. The logic of this solution is that the function of a court of law is to determine whether the accused is truly guilty of the offence with which he is charged. Its function is not to discipline the police force, over which it has no direct powers of control, by the indirect method of letting a guilty man go free to commit further crimes against public order and safety. In the case of a hardened terrorist this is a likely result of this method of marking the court's disapproval of the behaviour of the police.

89. Nevertheless, we think that logic ought to yield to the consideration that the reputation of courts of justice would be sullied if they countenanced convictions on evidence obtained by methods which flout universally accepted standards of behaviour. We consider therefore that although the current technical rules, practice and judicial discretions as to the admissibility of confession ought to be suspended for the duration of the emergency in respect of Scheduled Offences, they should be replaced by a simple legislative provision that:

- (1) Any inculpatory admission made by the accused may be given in evidence unless it is proved on a balance of probabilities that it was obtained by subjecting the accused to torture or to inhuman or degrading treatment; and
- (2) The accused shall not be liable to be convicted on any inculpatory admission made by him and given in evidence if, after it has been given in evidence, it is similarly proved that it was obtained by subjecting him to torture or to inhuman or degrading treatment.

90. In recommending this exception to the admissibility of confessions we have adopted the wording of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. It is a simple concept which we do not think the judiciary in Northern Ireland would find it difficult to apply in practice. It would not render inadmissible statements obtained as a result of building up a psychological atmosphere in which the initial desire of the person being questioned to remain silent is replaced by an urge to confide in the questioner, or statements preceded by promises of favours or indications of the consequences which might follow if the person questioned persisted in refusing to answer. Such matters, of course, might affect the reliability of the confession as establishing the guilt of the accused and should be fully investigated on that issue. They would not affect its initial admissibility in evidence unless they could be fairly regarded as so outrageous as to amount to torture or to inhuman or degrading treatment.

91. We do not think that with human life and property so gravely at risk any fair-minded man would consider that in the present emergency the police who are charged with the detection of crime should be discouraged from creating by means which do not involve physical violence, the threat of it or any other inhuman or degrading treatment, a situation in which a guilty man is more likely than he would otherwise have been to overcome his initial reluctance to speak and to unburden himself to his questioners.

92. If our recommendation is accepted that trial of Scheduled Offences should be by judge alone, there may be cases where it will be necessary for the judge to see the statement itself in order to decide whether an allegation by the accused that it was obtained by subjecting him to treatment of the prohibited kinds is true. If in the result he reaches the conclusion that the statement ought not to be admitted the judge should have a discretion to order a new trial before another judge in any case where he felt that his knowledge of the contents of the statement would handicap him in forming an opinion whether the other evidence against the accused was sufficiently strong in itself to establish guilt.

Admissibility of Signed Statements

93. In the dreadful case to which we referred earlier in our Report of the witness who was murdered the day before he was due to give evidence at the trial of three men charged with a terrorist offence, he had already given evidence in the committal proceedings and this had been incorporated in a written deposition signed by him. Under long-established law in Northern Ireland this was admissible in evidence at the trial. As a result, the accused were convicted and the murder failed in one of its objects though it succeeded in its other and wider object of deterring potential witnesses in other terrorist crimes from coming forward. But it would have succeeded in both its objects if it had been committed earlier and the available statement signed by the victim had been one made to the police in the course of their investigations and not yet embodied in a deposition taken at the committal proceedings themselves. This would not have been admissible in evidence in criminal proceedings in Northern Ireland as the law now stands.

94. This is because the so-called "rule against hearsay", which has been abolished in civil proceedings in both England and Northern Ireland, still applies in criminal proceedings in both countries. Proposals to modify it in criminal cases also in England have been recently made by the Criminal Law Revision Committee (Cmd. 4991) but these have not yet been debated in Parliament.

95. As already stated we have thought it right to confine our attention to the particular problems created in Ireland by the existing emergency and to limit our recommendations to changes in the administration of justice which are needed to enable more terrorist crimes to be effectively tried in courts of law instead of being dealt with by detention.

96. Without prejudice to the possibility of a broader modification of the rule against "hearsay" in all criminal proceedings at some future date, we think that a minimum but immediate alteration is needed to meet the problem that witnesses to terrorist crimes may be killed or so injured as to be incapable of coming to court, or may flee from Northern Ireland or go into hiding in fear for their own safety, with the result that it is impracticable to produce them to give oral evidence in court.

97. What we recommend is that it should be provided by legislation that :

- (1) Any signed written statement, if made by any person to a police officer or member of the armed forces or other person charged with

the duty of investigating offences or charging offenders, in the course of investigating any crimes or suspected crime which is a Scheduled Offence, should be admissible as evidence of any fact stated therein of which direct oral evidence by the maker of the statement would be admissible, if it is shown that the maker of the statement:

- (a) is dead or is unfit by reason of his bodily or mental condition to attend as a witness; or
 - (b) is outside the Province and it is not reasonably practicable to secure his attendance, or
 - (c) all reasonable steps have been taken to find him, but he cannot be found.
- (2) The weight to be attached to a statement admitted under (1) should be a matter for the court of trial.

98. We have limited our recommendation to signed written statements by identified persons. This limits any risk of misreporting of any oral statement made. The limitation to statements made to police officers etc., engaged in the investigation of crime is designed to secure that the maker should be aware at the time of making it that it was made on a serious occasion and was likely to lead to his being required to confirm it on oath in open court. The provision that the statement should only be admissible as evidence of matters of which direct oral evidence by the maker would be admissible excludes all matters not within his own direct knowledge; that is to say it excludes everything that any laymen would regard as hearsay, though as used by lawyers the expression "hearsay" has a wider technical meaning which embraces all statements, even though written, which are not made or confirmed to a court of law orally and upon oath.

99. We think that this change in the law would be most conveniently applied in a trial by a judge alone; since he is more experienced than a jury may be in weighing the probative value of statements which *ex hypothesi* cannot be subject to the test of cross-examination. If our recommendation for suspending trial by jury in the case of the Scheduled Offences is adopted, the recommendation will only apply in cases of trial by judge alone or by a Resident Magistrate.

100. Whatever merits there may be in a wider relaxation of the rule against hearsay in criminal cases generally, we do not think that it would help to solve the special problems caused by terrorist activities. To estimate the probative value of a statement made by a person who is not called as a witness at the trial it is necessary to know who and what manner of man he was, to whom and in what circumstances the statement was made, what opportunities the maker had of seeing or hearing accurately each of the incidents that his statement records. The only reason why the witness cannot be called to give oral evidence in person is to prevent disclosure of these very matters to the accused lest they be passed on to other terrorists who are still at liberty. To relax the rule against hearsay does not solve these problems which are special to terrorist crimes in Northern Ireland.

CHAPTER 9

YOUNG TERRORISTS

101. One of the most troubling features of the present situation is the use made of the young by terrorist organisations to aid them in carrying on their activities and to hamper the work of the security forces.

102. This is primarily an urban problem. With the breakdown of law and order in the Republican strongholds in Belfast and Londonderry, the youngsters who live there have been growing up in an environment of violence and destruction. To them a battlefield is always at their door. So long as this environment endures it is, we think, inevitable that youngsters will need little persuasion to join in disorderly gangs roaming the streets and taking advantage of any opportunity to attack the troops patrolling those areas with stones and other missiles. They are used as willing tools by members of terrorist organisations to act as a living screen for gunmen, to draw security forces into ambushes and to create disorder to hamper them in making arrests.

103. The youngsters who take part in this kind of activity are often more adventurous than delinquent. In normal times they would be unlikely to get into trouble with the law at all. But they make the task of the security forces immensely difficult and increase significantly the risk to their lives. These youngsters present one kind of problem.

104. But there is also another which is different in kind. The Provisional IRA has frequently used boys aged 14 to 16 years to carry out serious acts of terrorism. Such youths have been known to shoot with intent to kill and to plant lethal explosives. So long as these are at liberty they are a direct menace to human life.

105. The Children and Young Persons Act (Northern Ireland) 1968, contains elaborate provisions for dealing with criminal offences by children (aged from 10 to 13 years) and young persons (aged from 14 to 16 years). Proceedings against young persons are initiated in a Juvenile Court composed of a Resident Magistrate and two lay members. On a charge of any indictable offence other than murder it may commit the young person for trial by a regular higher criminal court or, with the consent of both the young person and the prosecution, may try the case itself. The Act contemplates the existence of a variety of institutions (in addition to prison and Borstal) of different kinds to which young persons can be remanded pending trial *viz.* remand homes, special reception centres, remand centres) or to which they can be sentenced after a finding of guilt (*viz.* training schools, remand homes, attendance centres and young offenders centres). These provisions are substantially the same as those in force in England before the passing of the Children and Young Persons Act, 1969.

106. We do not find it useful to discuss these provisions in detail because in fact, apart from prison, there are in existence only two institutions, a training school for Catholic boys and a training school for Protestant boys, to which young male offenders below the age of 17 can be remanded pending

trial or sentenced on trial. These do duty for all the various other institutions contemplated by the Act. Neither training school is secure. They were not intended to be. There is nothing to prevent anyone absconding. To make them secure or to attach a security block to either of them would frustrate the purpose for which they were primarily intended—to train and rehabilitate children who are the victims of parental neglect or of bad environment.

107. The only secure institution available for a young person on remand pending trial is a prison. He may only be remanded to a prison if the Juvenile Court certifies that he is of so unruly a character that he cannot be safely committed to a training school or so depraved that he is not fit to be detained there. A young person may only be sentenced to prison after a finding of guilt on a similar certificate by the sentencing court. On conviction on indictment for murder or for an offence punishable in the case of an adult with imprisonment for 14 years or more he may be sentenced to be detained, which in practice means imprisoned, though except in a case of murder this can only be done if the sentencing court is of opinion that there is no other suitable way of dealing with him.

108. The consequences of the lack of any secure establishment other than an ordinary adult prison for the reception of young persons on remand pending trial are, in our view, little short of disastrous in the present emergency. Unless the remanding court takes the drastic and undesirable step of remanding him to prison and certifying to his unruly or depraved character (which is often an inapt description of the kind of youth who is not a gunman but commits offences of disorderly conduct directed against army patrols) a young person must be remanded to a training school from which there is nothing to prevent his absconding. This happens with alarming frequency. So it does, though not to the same extent, to those sent to a training school after trial and sentence. Apart from the bad effect upon the absconder himself who thereafter has to “go on the run”, it damages the morale of the troops to know that there is back on the streets, within a day or two after they have arrested him at considerable personal risk, a young person who at very least was attacking them with non-lethal weapons or, at worst, whom they believe had been shooting at them with intent to kill.

109. We understand that there are long-term plans to build a Young Offenders Centre with secure accommodation for 35 boys aged 16 and over but this is not due to be completed until 1976. We are frankly appalled at the apparent lack of any sense of urgency. The need is immediate for a secure unit capable of accommodating up to 100 young persons aged from 14 to 16 years on remand and after sentence. We find it difficult to credit that temporary accommodation of this kind could not be prepared in a matter of weeks rather than years. However makeshift, it would in our view be better than leaving courts who have the responsibility of remanding or sentencing a young person who is being used to assist terrorist activities or is committing terrorist acts himself, with no choice except to send him to a training school from which he can immediately escape or to a prison in which he will be confined with adult offenders many of whom are members of terrorist organisations themselves.

110. We recognise that there are two classes of youthful offenders, the adventurous and the hardened, to whom we referred at the beginning of this section of our Report. It would be much better for them not to be confined in the same secure institution, but it may not be practicable to provide two. If this cannot be done in the immediate future we think that the grounds upon which the court is empowered to remand or sentence a young person to prison should be extended to enable them to do so in cases where they were of opinion that the gravity of the offence with which he was charged made him unsuitable for confinement in any other establishment. The Juvenile Court could then use its discretion in balancing the respective disadvantages of allowing him to associate with less hardened young offenders at the secure unit for young persons or allowing him to associate with more hardened adult offenders in prison.

111. With regard to those young persons who do not themselves commit terrorist acts, but play a part in creating disorders associated with terrorist activities, their degree of involvement may vary considerably. It would, we think, be a policy of despair to compel juvenile courts to treat them all on the same footing. The court ought to have a wide discretion to distinguish between one case and another. At present there is a mandatory minimum sentence of six months' detention in a training school for riotous behaviour—one of the commonest offences by young persons. For those, not the ring-leaders but the easily led, a shorter punishment may provide a sufficient lesson not to do it again. We recommend that this minimum should be removed.

112. The secure unit which we recommend would presumably be officially classified as a "remand home". The maximum period for which a young person may be committed to a remand home by a Juvenile Court (except where the mandatory sentence provisions apply) is one month. We recommend that it should be extended to six months. The Juvenile Court would then have the discretion to sentence a young person convicted of riotous or disorderly behaviour to be detained for any period not exceeding six months to a remand home and to decide whether the appropriate remand home should be a training school or the new secure unit.

113. As respects a young person found guilty on indictment of more serious terrorist acts the sentencing court should have the discretion to sentence him to be detained in the new secure unit, under whatever name it may be described for this purpose, or in prison for such period as it thinks fit. The restriction of this power to offences which if committed by an adult are punishable by imprisonment for fourteen years or more excludes possession of firearms in suspicious circumstances and other serious terrorist crimes. We recommend that for the duration of the emergency this restriction should be withdrawn.

CHAPTER 10

THE SCHEDULED OFFENCES

114. The offences listed in the Schedule are those to which our recommendations as to BAIL, MODE OF TRIAL and the CONDUCT OF THE TRIAL are intended to apply. The list is subject to the qualifications mentioned in paragraph 7 of this Report: that it is not put forward as final or definitive and should also be subject to amendment by statutory instrument if terrorist tactics should change. The Schedule is intended to apply only during the period of the emergency which has led to our appointment: that is to say, for as long as the prevalence of violence in pursuit of political aims results in the intimidation of witnesses and so prevents the prosecution from calling them to give evidence in a court of law where there is any risk that their identity may become known. Whether any of our recommendations as to the CONDUCT OF THE TRIAL should remain in force thereafter, we do not regard as being a matter on which we are required to express any view.

115. The offences listed (other than riotous behaviour) are all triable upon indictment. Those marked with an asterisk may also be tried summarily if both the accused and the prosecution consent. Our recommendations as to MODE OF TRIAL, viz. by a High Court or County Court Judge sitting without a jury, apply only to trials on indictment. We do not propose any change in the existing system for allocating cases for trial on indictment between the Commission in Belfast, the County Assizes and the County Courts. Our recommendations as to the CONDUCT OF THE TRIAL apply to summary trial as well as to trial on indictment.

116. Our recommendations as to MODE OF TRIAL and the CONDUCT OF THE TRIAL apply to all offences listed in Parts I and II of the Schedule. The distinction between them affects only the question of BAIL. Most of them are already statutory offences under existing Statutes which contain a sufficiently precise definition of the offence to which our recommendations are intended to apply. But in certain cases, viz. robbery (under S. 8 of the Theft Act (Northern Ireland) 1969), wounding with intent, causing grievous bodily harm and causing actual bodily harm (under SS. 18, 20 and 47 of Offences against the Person Act, 1861) and causing malicious damage (under S. 51 of the Malicious Damage Act 1861), the statutory definition of the offence does not distinguish between cases in which explosives, firearms or other offensive weapons or incendiary devices are used for the purpose of committing the offence and cases where they are not. It is only the former type of case which we recommend for inclusion in Part I of the Schedule. Where this feature is absent, the offences should be in Part III. Legislation will be needed to carve out of the general offences a separate statutory offence of which the use of one or other of these means forms part of the definition. We have indicated in the Schedule where this will be necessary. Similarly the offence of intimidation under S. 1 of the Protection of Person and Property Act (Northern Ireland) 1969 is only included in the Schedule where its purpose is to pervert the course of justice.

117. In Part III of the Schedule we have listed the more serious offences involving the use or threat of violence to the person or the destruction of property, where these are not associated with the use of explosives, firearms or other offensive weapons or incendiary devices. While some of these may be planned or committed by members of terrorist organisations, others may be wholly unconnected with terrorist activities. In the latter case there is no need for the offence to be subject to the emergency procedures as to **MODE OF TRIAL** and the **CONDUCT OF THE TRIAL** which we have already recommended for all offences listed in Parts I and II. We recommend that these emergency procedures should apply to offences listed in Part III only in cases in which the Director of Public Prosecutions certifies that the charge is one which is fit to be dealt with under the emergency procedures. The issue of this certificate can take place at any time up to the commencement of the committal proceedings in a case to be tried on indictment or the commencement of the trial itself in a case to be tried summarily. By that time at the latest the DPP should have become sufficiently apprised of the facts relevant to the issue of a certificate. We contemplate that he would issue it only in cases where he had reason to suppose that terrorist activities were involved. But he should be under no legal obligation to state any reasons. His certificate should be conclusive.

118. Our recommendations as to **BAIL** must take effect at an earlier stage than our recommendations as to **MODE OF TRIAL** and the **CONDUCT OF THE TRIAL**. For this reason they present a rather different problem. Applications for bail can be made as soon as the accused has been charged and before the police investigations have been completed or the papers submitted to the DPP. We do not think that our recommendations as to **BAIL** should apply to the offences listed in Part III of the Schedule unless and until the DPP has issued his certificate that the charge is one which is fit to be dealt with under the emergency procedures. When such a certificate has been issued the offence, if murder or attempted murder, would be treated for the purpose of **BAIL** as if it were included in Part I of the Schedule and, if any other offence, as if it were included in Part II.

119. In all cases of charges of offences listed in Part I and II of the Schedule, our recommendations as to **BAIL** would apply as soon as the accused had been charged. As we have already stated in paragraph 49, the obligation upon the accused to satisfy the judge either that exceptional hardship would be caused to him if he were detained in custody or that he had been held in custody for the period there mentioned would apply only to the offences listed in Part I and to any murder or attempted murder in respect of which a certificate had been issued by the DPP. It would not apply to those listed in Part II or to offences, other than murder, listed in Part III in respect of which a certificate had been issued. But in all other respects the recommendations would apply to all offences listed in Part I or II and to certificated offences listed in Part III.

APPENDIX

SCHEDULED OFFENCES

PART I

1. Explosives*(a) Explosive Substances Act 1883*

- (i) S. 2—Causing explosion likely to endanger life or property;
- (ii) S. 3—Attempting to do act mentioned in S. 2 or being in possession of explosive for that purpose;
- (iii) S. 4—Making or being in possession of explosives under suspicious circumstances;
- (iv) S. 5—Being an accessory.

(b) Offences Against the Person Act 1861

- (i) S. 28—Causing grievous bodily harm by explosives;
- (ii) S. 29—Causing explosion or sending explosive substance or throwing corrosive liquid with intent to cause grievous bodily harm;
- (iii) S. 30—Placing explosives near building or ship with intent to do bodily injury;
- (iv) S. 64—Making or possessing explosives, etc., for purpose of committing indictable offence.

(c) Malicious Damage Act 1861

- * (i) S. 9—Destroying or damaging house by explosives (while person inside);
- * (ii) S. 10—Attempting to destroy building with explosives;
- (iii) S. 45—Place or throw explosives by or at ship with intent to damage it.

(d) Protection of the Person and Property Act (NI) 1969

- * (i) S. 2—Making or possessing petrol bombs;
- (ii) S. 3—Throwing, etc., petrol bombs.

2. Firearms*Firearms Act (NI) 1969*

- * (i) S. 3—Shortening barrel of shotgun or converting imitation firearm into firearm;
- * (ii) S. 4—Manufacture, dealing in or possession of prohibited weapons and ammunition, *i.e.* automatic weapons and poisonous gas and the like;
- (iii) S. 14—Possession of firearm or ammunition with intent to endanger life or cause serious injury to property;
- (iv) S. 15—Use or attempted use of firearm to resist arrest;
- (v) S. 16—Carrying firearm with criminal intent;
- (vi) S. 17—Carrying loaded firearm in public place;

* See paragraph 115.

- *(vii) S. 19—Possession of firearms by person who has been sentenced to preventive detention or corrective training for three years or more or sale of firearms to such a person;
- (viii) S. 19A—Possession of firearms or ammunition in suspicious circumstances.

3. Robbery or assault with firearm or offensive weapon

(a) *Theft Act (N.I.) 1969*

- (i) S. 8—Robbery, **provided that firearm or offensive weapon is used;**
- (ii) S. 10—Aggravated burglary.

(b) *Offences Against the Person Act 1861*

- (i) SS. 18 (wounding with intent),* 20 (grievous bodily harm) and* 47 (actual bodily harm), **provided that offences caused by firearm or offensive weapon.**

4. Arson and malicious damage by fire

Malicious Damage Act 1861

- *(a) SS. 1 to 7—Setting fire to various buildings;
- *(b) SS. 16 to 18—Setting fire to corn;
- *(c) S. 51—Malicious damage generally, **provided that it is caused by fire.**

5. Regulations made under Civil Authorities (Special Powers) Act (N.I.) 1922

- *(a) Reg. 22—Contravention of requirement not to collect etc. information about police;
- *(b) Reg. 24A—Membership of unlawful association;
- *(c) Reg. 25—Interference with telephone apparatus;
- *(d) Reg. 26—Possession of ciphers and codes without lawful excuse which may be prejudicial to preservation of peace etc.;
- *(e) Reg. 27—Injury to railways etc.;
- *(f) Reg. 29—Endangering safety of police by discharging firearm or otherwise;
- *(g) Reg. 31—Possession of offensive weapon.

6. Riotous behaviour

Malicious Damage Act 1861

- *(i) S. 11—Rioters demolishing building;
- *(ii) S. 12—Rioters injuring building, machinery etc.

7. Intimidation

*S. 1 of the Protection of the Person and Property Act (N.I.) 1969, **provided that its object is to pervert the course of justice.**

8. Attempts etc.

Any attempt or conspiracy or incitement to commit or offence of aiding and abetting any of the above offences.

PART II

9. Firearms Act (N.I.) 1969

- *(a) S. 1—Possessing, purchasing or acquiring firearms or ammunition without firearms certificate;
- *(b) S. 2—Business and other transactions with firearms or ammunition;
- (c) S. 18—Trespassing with firearm on land.

10. Regulations made under Civil Authorities (Special Powers) Act (N.I.) 1922

- *(a) Reg. 9—Damage or interference with road block;
- *(b) Reg. 38—Failure of persons constituting assembly which may lead to public disorder to disperse when ordered to do so.

11. (a) Common law offence of riot**(b) Riotous behaviour**

Section 9, Criminal Justice Act (Northern Ireland) 1968.

12. Attempts etc.

Any attempt or conspiracy or incitement to commit or offence of aiding and abetting any of the above offences.

PART III

13. Murder**14. Other serious offences against person or property where no firearm or offensive weapon is used****(a) Offences Against Person Act 1861**

- (i) SS. 18 and 20;
- (ii) S. 21—Attempting to strangle or choke in order to commit indictable offence;
- (iii) S. 22—Unlawfully administering drugs in order to commit indictable offence.

(b) Theft Act (N.I.) 1969

- (i) S. 8—Robbery;
- (ii) S. 9—Burglary.

(c) Malicious Damage Act 1861

- *(i) S. 14—Injuring goods and machinery;
- (ii) SS. 19 to 49—Miscellaneous offences of damage to various things e.g. trees, bridges, cattle, telegraph poles;
- *(iii) S. 51—Malicious damage generally.

15. Attempts etc.

Any attempt or conspiracy or incitement to commit or offence of aiding and abetting any of the above offences.



Northern Ireland (Emergency Provisions) Act 1973

CHAPTER 53

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CHAPTER 53

ARRANGEMENT OF SECTIONS

PART I

TRIAL AND PUNISHMENT OF CERTAIN OFFENCES

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ELIZABETH II



Northern Ireland (Emergency Provisions) Act 1973

1973 CHAPTER 53

An Act to make provision with respect to the following matters in Northern Ireland, that is to say, proceedings for and the punishment of certain offences, the detention of terrorists, the preservation of the peace, the maintenance of order and the detection of crime and to proscribe and make other provision in connection with certain organisations there, and for connected purposes. [25th July 1973]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

TRIAL AND PUNISHMENT OF CERTAIN OFFENCES

1.—(1) No person shall suffer death for murder and a person convicted of murder shall, subject to section 73(1) of the Children and Young Persons Act (Northern Ireland) 1968 (detention of young persons during pleasure), be sentenced to imprisonment for life. Punishment for murder. 1968 c. 34 (N.I.).

(2) On sentencing any person convicted of murder to imprisonment for life the court may at the same time declare the period which they recommend to the Minister of Home Affairs for Northern Ireland as the minimum period which in

PART I
1953 c. 18
(N.I.).

their view should elapse before the Minister orders the release of that person on licence under section 23 of the Prison Act (Northern Ireland) 1953.

(3) The Minister of Home Affairs for Northern Ireland shall not release or discharge on licence a person convicted of murder and serving a sentence of imprisonment for life or detained under the said section 73(1), except after consultation with the Lord Chief Justice of Northern Ireland together with the trial judge, if available.

(4) For the purpose of any proceedings on or subsequent to a person's trial on a charge of capital murder, that charge and any plea or finding of guilty of capital murder shall be treated as being or having been a charge, or a plea or finding of guilty, of murder only; and if at the commencement of this Act a person is under a sentence of death for capital murder, the sentence shall have effect as a sentence of imprisonment for life.

1966 c. 20
(N.I.).

(5) In this section "capital murder" means a murder which immediately before the commencement of this Act is a capital murder within the meaning of section 10 of the Criminal Justice Act (Northern Ireland) 1966.

Mode of
trial on
indictment of
scheduled
offences.

2.—(1) A trial on indictment of a scheduled offence shall be conducted by the court without a jury.

(2) The court trying a scheduled offence on indictment under this section shall have all the powers, authorities and jurisdiction which the court would have had if they had been sitting with a jury, including power to determine any question and to make any finding which would, apart from this section, be required to be determined or made by a jury, and references in any enactment to a jury or the verdict or finding of a jury shall be construed accordingly in relation to a trial under this section.

(3) Where an indictment contains a count alleging a scheduled offence and another count alleging an offence which at the time the indictment is presented is not a scheduled offence, the other count shall be disregarded.

(4) Without prejudice to subsection (2) above, where the court trying a scheduled offence on indictment are not satisfied that the accused is guilty of that offence, but are satisfied that he is guilty of some other offence which is not a scheduled offence, but of which a jury could have found him guilty on a trial for the scheduled offence, the court may convict him of that other offence.

(5) Where the court trying a scheduled offence convict the accused of that or some other offence, then, without prejudice to their power apart from this subsection to give a judgment, they shall, at the time of conviction or as soon as practicable thereafter, give a judgement stating the reasons for the conviction.

(6) A person convicted of any offence on a trial under this section without a jury may, notwithstanding anything in section 8 of the Criminal Appeal (Northern Ireland) Act 1968, appeal to the Court of Criminal Appeal under that section— PART I
1968 c. 21.

(a) against his conviction, on any ground, without the leave of the Court of Criminal Appeal or a certificate of the judge of the court of trial; and

(b) against sentence passed on conviction, without such leave, unless the sentence is one fixed by law.

(7) Where a person is so convicted, the time for giving notice of appeal under section 20(1) of the said Act of 1968 shall run from the date of judgement, if later than the date from which it would run under that subsection.

3.—(1) Subject to the provisions of this section, a person to whom this section applies and who is charged with a scheduled offence shall not be admitted to bail except by a judge of the High Court acting in that capacity and, if he is convicted of such an offence, shall not be admitted to bail pending any appeal. Limitation
of power to
grant bail in
case of
scheduled
offences.

(2) A judge shall not admit any such person to bail unless he is satisfied that the applicant—

(a) will comply with the conditions on which he is admitted to bail; and

(b) will not interfere with any witness; and

(c) will not commit any offence while he is on bail.

(3) Without prejudice to any other power to impose conditions on admission to bail, a judge may impose such conditions on admitting a person to bail under this section as appear to him to be likely to result in that person's appearance at the time and place required or to be necessary in the interests of justice or for the prevention of crime.

(4) Nothing in this section shall prejudice any right of appeal against the refusal of a judge of the High Court to grant bail.

(5) This section applies to persons who have attained the age of 14 and are not serving members of any of Her Majesty's regular naval, military or air forces.

4.—(1) A trial on indictment of a scheduled offence shall be held only at the Belfast City Commission or the Belfast Recorder's Court. Court for
trial of
scheduled
offences.

(2) A magistrates' court who commit a person for trial on indictment for a scheduled offence shall commit him for trial to the Belfast City Commission or to the Belfast Recorder's Court, and section 47 of the Magistrates' Courts Act (Northern Ireland) 1964 (committal to assize or county court) shall have effect accordingly. 1964 c. 21
(N.I.).

PART I

(3) A county court judge may at any time, at the request of the Lord Chief Justice of Northern Ireland, sit and act as a judge at the Belfast City Commission for the trial on indictment of a scheduled offence, or for two or more such trials, and while so sitting and acting shall have all the jurisdiction, powers and privileges of a High Court judge included in the Commission, so far as concerns any such trial, except the power to admit to bail.

(4) A county court judge requested to sit and act as aforesaid for a period of time may, notwithstanding the expiry of that period, attend at the Belfast City Commission for the purpose of continuing to deal with, giving judgment in or dealing with any ancillary matter relating to, any case which may have begun before him when sitting as a judge at the Commission and shall have the same jurisdiction, powers and privileges as under subsection (3) above.

5. In any criminal proceedings for a scheduled offence a written statement made and signed by any person in the presence of a constable shall be admissible as evidence of any fact stated therein of which direct oral evidence by him would be admissible, if it is shown that—

- (a) the maker of the statement is dead, or is unfit by reason of his bodily condition to attend as a witness or is unfit to attend as a witness, by reason of a mental condition which has arisen since he made the statement ; or
- (b) he is outside Northern Ireland and it is not reasonably practicable to secure his attendance ; or
- (c) all reasonable steps have been taken to find him, but he cannot be found.

6.—(1) In any criminal proceedings for a scheduled offence a statement made by the accused may be given in evidence by the prosecution in so far as it is relevant to any matter in issue in the proceedings and is not excluded by the court in pursuance of subsection (2) below.

(2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, *prima facie* evidence is adduced that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies them that the statement was not so obtained, exclude the statement or, if it has been received in evidence, shall either continue the trial disregarding the statement or direct that the trial shall be restarted before a differently constituted court (before whom the statement in question shall be inadmissible).

Admissibility
of written
statements in
proceedings
relating to
scheduled
offences.

Admissions
by persons
charged with
scheduled
offences.

7.—(1) Where a person is charged with possessing a proscribed article in such circumstances as to constitute an offence to which this section applies and it is proved that at the time of the alleged offence—

PART 1

Onus of proof in relation to offences of possession.

(a) he and that article were both present in any premises ;
or

(b) the article was in premises of which he was the occupier or which he habitually used otherwise than as a member of the public ;

the court may accept the fact proved as sufficient evidence of his possessing (and, if relevant, knowingly possessing) that article at that time unless it is further proved that he did not at that time know of its presence in the premises in question, or if he did know, that he had no control over it.

(2) This section applies to vessels, aircraft and vehicles as it applies to premises.

(3) In this section “ proscribed article ” means an explosive, firearm, ammunition, substance or other thing (being a thing possession of which is an offence under one of the enactments mentioned in subsection (4) below).

(4) This section applies to scheduled offences under the following enactments, that is to say—

The Explosive Substances Act 1883

1883 c. 3.

Section 3, so far as relating to paragraph (b) thereof (possessing explosive with intent to endanger life or cause serious damage to property).

Section 4 (possessing explosive in suspicious circumstances).

The Firearms Act (Northern Ireland) 1969

1969 c. 12
(N.I.).

Section 1 (possessing firearm or ammunition without, or otherwise than as authorised by, a firearm certificate).

Section 4 (possessing machine gun or machine pistol or weapon discharging, or ammunition containing, noxious substance).

Section 14 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property).

Section 15(2) (possessing firearm or imitation firearm at time of committing, or being arrested for, a specified offence).

Section 19(1) to (3) (possession of a firearm or ammunition by a person who has been sentenced to imprisonment, etc.).

Section 19A (possessing firearm or ammunition in suspicious circumstances).

The Protection of the Person and Property Act
(Northern Ireland) 1969

1969 c. 29
(N.I.).

Section 2 (possessing petrol bomb, etc., in suspicious circumstances).

PART I

Treatment of
young persons
convicted of
scheduled
offences.
1968 c. 34
(N.I.).

8.—(1) Section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968 (under which a court may sentence a child or young person convicted on indictment of an offence punishable in the case of an adult with imprisonment for fourteen years or more to detention for a period specified in the sentence) shall have effect in relation to a young person convicted of a scheduled offence committed while this subsection is in force with the substitution of the word “five” for the word “fourteen”.

(2) Subsection (3) of section 74 of that Act (under which the maximum length of the term or the aggregate of the terms for which a person may be committed in custody to a remand home under paragraph (e) of subsection (1) of that section is one month) shall have effect in relation to a young person found guilty of a scheduled offence committed while this subsection is in force with the substitution of the words “six months” for the words “one month”.

Remand
homes and
training
schools.

9.—(1) Neither an order under section 51(1)(a) of the Children and Young Persons Act (Northern Ireland) 1968 (order for committal of a child or young person to a remand home) nor a training school order within the meaning of that Act shall specify the remand home or training school to which the person to whom it relates is to be sent.

(2) After the said section 51(1) there shall be inserted the following subsection:—

“(1A) An order for committal under subsection (1)(a) shall be authority for the detention of the person to whom it relates in any remand home and the remand home in which he is to be detained at any time shall be determined by the Ministry”.

(3) In section 53(2) of the said Act of 1968 (report as to circumstances of child or young person and as to available training schools) for the word “available”, in the second place where it occurs, there shall be substituted the words “the availability of accommodation at”.

(4) After section 85(1) of that Act (training school orders) there shall be inserted the following subsections:—

“(1A) A training school order shall be authority for the detention of the person to whom it relates in any training school and the school in which he is to be detained at any time shall be determined by the Ministry.

(1B) In the selection of a training school to which a child or young person is to be sent, the Ministry shall have regard of his religious persuasion.

PART I

(1C) If the parent, guardian or nearest adult relative of a person in respect of whom a training school order has been made applies to the court for an order under this subsection and proves to the court that the religious persuasion of that person is not as declared under subsection (1)(b) by the training school order, the court shall by order declare the religious persuasion of that person to be that so proved and send a copy of its order to the Ministry; but no such application shall be made with respect to any person later than thirty days after the training school order relating to him was made.

(1D) The court to which an application under subsection (1C) is to be made is—

- (a) if the training school order was made by a juvenile court or other court of summary jurisdiction, a juvenile court acting for the same petty sessions district as that court;
- (b) in any other case, a juvenile court acting for the petty sessions district in which the applicant resides."

(5) After section 132(4) of the said Act of 1968 (power to make rules about remand homes) there shall be inserted the following subsections:—

"(4A) Rules under subsection (4) may also make provision whereby a person in custody in a remand home may be temporarily released or may on the ground of his industry and good conduct be granted such remission as may be prescribed by the rules.

(4B) On the discharge of a person from a remand home in pursuance of remission granted under any such rules, the order for his committal to the remand home shall cease to have effect".

PART II

POWERS OF ARREST, DETENTION, SEARCH AND SEIZURE, ETC.

10.—(1) Any constable may arrest without warrant any person whom he suspects of being a terrorist. Arrest and detention of terrorists.

(2) For the purpose of arresting a person under this section a constable may enter and search any premises or other place where that person is or where the constable suspects him of being.

(3) A person arrested under this section shall not be detained in right of the arrest for more than seventy-two hours after his arrest, and section 132 of the Magistrates' Courts Act (Northern 1964 c. 21 (N.I.).

PART II
1968 c. 34
(N.I.).

Ireland) 1964 and section 50(3) of the Children and Young Persons Act (Northern Ireland) 1968 (requirement to bring arrested person before a magistrates' court not later than forty-eight hours after his arrest) shall not apply to any such person.

(4) Where a person is arrested under this section, an officer of the Royal Ulster Constabulary not below the rank of chief inspector may order him to be photographed and to have his finger prints and palm prints taken by a constable, and a constable may use such reasonable force as may be necessary for that purpose.

(5) The provisions of Schedule 1 to this Act shall have effect with respect to the detention of terrorists and persons suspected of being terrorists.

Constables' general power of arrest and seizure.

11.—(1) Any constable may arrest without warrant any person whom he suspects of committing, having committed or being about to commit a scheduled offence or an offence under this Act which is not a scheduled offence.

(2) For the purposes of arresting a person under this section a constable may enter and search any premises or other place where that person is or where the constable suspects him of being.

(3) A constable may seize anything which he suspects is being, has been or is intended to be used in the commission of a scheduled offence or an offence under this Act which is not a scheduled offence.

Powers of arrest of members of Her Majesty's forces.

12.—(1) A member of Her Majesty's forces on duty may arrest without warrant, and detain for not more than four hours, a person whom he suspects of committing, having committed or being about to commit any offence.

(2) A person effecting an arrest under this section complies with any rule of law requiring him to state the ground of arrest if he states that he is effecting the arrest as a member of Her Majesty's forces.

(3) For the purpose of arresting a person under this section a member of Her Majesty's forces may enter and search any premises or other place where that person is or, if that person is suspected of being a terrorist or of having committed an offence involving the use or possession of an explosive, explosive substance or firearm, where that person is suspected of being.

Power to search for munitions.

13.—(1) Any member of Her Majesty's forces on duty or any constable may enter any premises or other place other than a dwelling-house for the purpose of ascertaining whether there are any munitions unlawfully at that place and may search the place for any munitions with a view to exercising the powers conferred by subsection (4) below.

PART II

(2) Any member of Her Majesty's forces on duty authorised by a commissioned officer of those forces or any constable authorised by an officer of the Royal Ulster Constabulary not below the rank of chief inspector may enter any dwelling-house in which it is suspected that there are unlawfully any munitions and may search it for any munitions with a view to exercising the said powers.

(3) Any member of Her Majesty's forces on duty or any constable may—

(a) stop any person in any public place and with a view to exercising the said powers search him for the purpose of ascertaining whether he has any munitions unlawfully with him; and

(b) with a view to exercising the said powers search any person not in a public place whom he suspects of having any munitions unlawfully with him.

(4) A member of Her Majesty's forces or a constable authorised to search any premises or other place or any person under this Act may seize any munitions found in the course of the search unless it appears to the person so authorised that the munitions are being, have been and will be used only for a lawful purpose and may retain and, if necessary, destroy them.

(5) In this section "munitions" means—

(a) explosives, explosive substances, firearms and ammunition; and

(b) anything used or capable of being used in the manufacture of any explosive, explosive substance, firearm or ammunition.

14.—(1) An inspector appointed under section 53 of the Explosives Act 1875 may, for the purpose of ascertaining whether there is unlawfully in any premises or other place other than a dwelling-house any explosive or explosive substance, enter that place and search it with a view to exercising the powers conferred by subsection (3) below. Powers of explosives inspectors. 1875 c. 17.

(2) Any such inspector may stop any person in a public place and search him for the purpose of ascertaining whether he has any explosive or explosive substance unlawfully with him with a view to exercising the said powers.

(3) Any such inspector may seize any explosive or explosive substance found in the course of a search under this section unless it appears to him that it is being, has been and will be used only for a lawful purpose and may retain and, if necessary, destroy it.

PART II

Entry to
search for
persons
unlawfully
detained.

15. Where any person is believed to be unlawfully detained in such circumstances that his life is in danger, any member of Her Majesty's forces on duty or any constable may enter any premises or other place for the purpose of ascertaining whether that person is so detained there, but a dwelling-house may be entered in pursuance of this section by a member of Her Majesty's forces only when authorised to do so by a commissioned officer of those forces and may be so entered by a constable only when authorised to do so by an officer of the Royal Ulster Constabulary not below the rank of chief inspector.

Power to stop
and question.

16.—(1) Any member of Her Majesty's forces on duty or any constable may stop and question any person for the purpose of ascertaining that person's identity and movements and what he knows concerning any recent explosion or any other incident endangering life or concerning any person killed or injured in any such explosion or incident.

(2) Any person who fails to stop when required to do so under this section, or who refuses to answer or fails to answer to the best of his knowledge and ability, any question addressed to him under this section, shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

General
powers of
entry and
interference
with rights of
property and
with highways.

17.—(1) Any member of Her Majesty's forces on duty or any constable may enter any premises or other place—

- (a) if he considers it necessary to do so in the course of operations for the preservation of the peace or the maintenance of order; or
- (b) if authorised to do so by or on behalf of the Secretary of State.

(2) Any member of Her Majesty's forces on duty, any constable or any person specifically authorised to do so by or on behalf of the Secretary of State may, if authorised to do so by or on behalf of the Secretary of State—

- (a) take possession of any land or other property;
- (b) take steps to place buildings or other structures in a state of defence;
- (c) detain any property or cause it to be destroyed or moved;
- (d) do any other act interfering with any public right or with any private rights of property, including carrying out any works on any land of which possession has been taken under this subsection.

(3) Any member of Her Majesty's forces on duty, any constable or any person specifically authorised to do so by or on behalf of the Secretary of State may, so far as he considers it

immediately necessary for the preservation of the peace or the maintenance of order, wholly or partly close a highway or divert or otherwise interfere with a highway or the use of a highway, or prohibit or restrict the exercise of any right of way or the use of any waterway.

(4) Any person who, without lawful authority or reasonable excuse (the proof of which lies on him), interferes with works executed, or any apparatus, equipment or any other thing used, in or in connection with the exercise of powers conferred by this section shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

(5) Any authorisation to exercise any powers under any provision of this section may authorise the exercise of all those powers, or powers of any class or a particular power so specified, either by all persons by whom they are capable of being exercised or by persons of any class or a particular person so specified.

18.—(1) Any power conferred by this Part of this Act—

Supple-
mentary
provisions.

(a) to enter any premises or other place includes power to enter any vessel, aircraft or vehicle ;

(b) to search any premises or other place includes power to stop and search any vehicle or vessel or any aircraft which is not airborne and search any container ;

and in this Part of this Act references to any premises or place shall be construed accordingly and references to a dwelling-house shall include references to a vessel or vehicle which is habitually stationary and used as a dwelling.

(2) Any power so conferred to enter any place, vessel, aircraft or vehicle shall be exercisable, if need be, by force.

(3) Any power conferred by virtue of this section to search a vehicle or vessel shall, in the case of a vehicle or vessel which cannot be conveniently or thoroughly searched at the place where it is, include power to take it or cause it to be taken to any place for the purpose of carrying out the search.

(4) Any power conferred by virtue of this section to search any vessel, aircraft, vehicle or container includes power to examine it.

(5) Any power conferred by this Part of this Act to stop any person includes power to stop a vessel or vehicle or an aircraft which is not airborne.

(6) Any person who, when required by virtue of this section to stop a vessel or vehicle or any aircraft which is not airborne, fails to do so shall be liable on summary conviction to imprisonment to a term not exceeding six months or to a fine not exceeding £400, or both.

PART II

(7) A member of Her Majesty's Forces exercising any power conferred by this Part of this Act when he is not in uniform shall, if so requested by any person at or about the time of exercising that power, produce to that person documentary evidence that he is such a member.

1868 c. 37.

(8) The Documentary Evidence Act 1868 shall apply to any authorisation given in writing under this Part of this Act by or on behalf of the Secretary of State as it applies to any order made by him.

PART III

OFFENCES AGAINST PUBLIC SECURITY AND PUBLIC ORDER

Proscribed organisations.

19.—(1) Subject to subsection (7) below, any person who—

- (a) belongs or professes to belong to a proscribed organisation; or
- (b) solicits or invites financial or other support for a proscribed organisation, or knowingly makes or receives any contribution in money or otherwise to the resources of a proscribed organisation,

shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both, and on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or both.

(2) The court by or before whom a person is convicted of an offence under this section may order the forfeiture of any money or other property which at the time of the offence he had in his possession or under his control for the use or benefit of the proscribed organisation.

(3) The organisations specified in Schedule 2 to this Act are proscribed organisations for the purposes of this section; and any organisation which passes under a name mentioned in that Schedule shall be treated as proscribed, whatever relationship (if any) it has to any other organisation of the same name.

(4) The Secretary of State may by order add to Schedule 2 to this Act any organisation that appears to him to be concerned in terrorism or in promoting or encouraging it.

(5) The Secretary of State may also by order remove an organisation from Schedule 2 to this Act.

(6) The possession by a person of a document addressed to him as a member of a proscribed organisation, or relating or purporting to relate to the affairs of a proscribed organisation, or emanating or purporting to emanate from a proscribed organisation or officer of a proscribed organisation, shall be evidence of that person belonging to the organisation at the time when he had the document in his possession.

(7) A person belonging to a proscribed organisation shall—

PART III

(a) if the organisation is a proscribed organisation by virtue of an order under subsection (4) above; or

(b) if this section has ceased to be in force but has been subsequently brought into force by an order under section 30(3) below;

not be guilty of an offence under this section by reason of belonging to the organisation if he has not after the coming into force of the order under subsection (4) above or the coming into force again of this section, as the case may be, taken part in any activities of the organisation.

(8) In section 4 of the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 (assessment of compensation) and in the Criminal Injuries to Property (Compensation) Act (Northern Ireland) 1971, in their application to an injury or damage caused by an act committed while this section is in force, "unlawful association" includes a proscribed organisation.

1968 c. 9
(N.I.).
1971 c. 38
(N.I.).

20.—(1) No person shall, without lawful authority or reasonable excuse (the proof of which lies on him), collect, record, publish, communicate or attempt to elicit, any information with respect to the police or Her Majesty's forces which is of such a nature as is likely to be useful to terrorists, or have in his possession any record of or document containing any such information; and if any person contravenes this section, he shall be liable—

Unlawful collection, etc. of information.

(a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both;

(b) on conviction on indictment to imprisonment for a term not exceeding five years or a fine, or both.

(2) The court by or before whom a person is convicted of an offence under this section may order the forfeiture of any record or document mentioned in subsection (1) above which is found in his possession.

(3) In subsection (1) above the reference to recording information includes a reference to recording it by means of photography or by any other means.

(4) Without prejudice to section 33 of the Interpretation Act 1889 c. 63. 1889 (offences under two or more laws) nothing in this section shall derogate from the operation of the Official Secrets Acts 1911 and 1920.

21.—(1) Where any commissioned officer of Her Majesty's forces or any officer of the Royal Ulster Constabulary not below the rank of chief inspector is of opinion that any assembly of three or more persons may lead to a breach of the peace or

Failure to disperse when required to do so.

PART III

public disorder or may make undue demands on the police or Her Majesty's forces he, or any member of those forces on duty or any constable may order the persons constituting the assembly to disperse forthwith.

(2) Where an order is given under this section with respect to an assembly, any person who thereafter joins or remains in the assembly or otherwise fails to comply with the order shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

Riotous and
disorderly
behaviour, etc.
1968 c 28
(N.I.).

22. Section 9(1) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (punishment for riotous, disorderly and indecent behaviour, etc.) shall have effect in relation to an offence committed while this section is in force as if for the words from "on summary conviction" to the end of the subsection there were substituted the words "on summary conviction—

- (a) if his conviction is for riotous behaviour in, or any behaviour whereby a breach of the peace is likely to be occasioned in, a street, road, highway or other public place, to imprisonment for a term not exceeding eighteen months; and
- (b) in any other case, to imprisonment for a term not exceeding six months or to a fine not exceeding £100, or both."

Dressing or
behaving in a
public place
like a member
of a proscribed
organisation.

23. Any person who in a public place dresses or behaves in such a way as to arouse reasonable apprehension that he is a member of a proscribed organisation shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

PART IV

MISCELLANEOUS AND GENERAL

Supple-
mentary
regulations
for preserving
the peace, etc.

24.—(1) The Secretary of State may by regulations make provision additional to the foregoing provisions of this Act for promoting the preservation of the peace and the maintenance of order.

(2) Any person contravening or failing to comply with the provisions of any regulations under this section or any instrument or directions under any such regulations shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

(3) The regulations contained in Schedule 3 to this Act shall be deemed to have been made under this section and to have been approved in draft by each House of Parliament, and may be varied or revoked accordingly.

PART IV

25.—(1) Where under this Act any real or personal property is taken, occupied, destroyed or damaged, or any other act is done interfering with private rights of property, compensation shall, subject to the provisions of this section, be payable by the Ministry. Provisions as to compensation.

(2) Any question as to compensation under this section shall, in default of agreement, be referred for determination to the county court or an arbitrator to be appointed by that court, and the procedure for determining any question so referred shall be that prescribed by rules made by the Lord Chief Justice of Northern Ireland after consultation with the Ministry.

(3) Nothing in this section shall be construed as giving to any person by whom an offence has been committed any right to compensation in respect of property taken, occupied, destroyed or damaged or in respect of any other act done in connection with the offence.

26.—(1) A prosecution shall not be instituted in respect of any offence under this Act except by or with the consent of the Director of Public Prosecutions for Northern Ireland. Restriction of prosecutions.

(2) Article 7 of the Prosecution of Offences (Northern Ireland) Order 1972 shall apply in relation to any offence under this Act as if the provision creating that offence were a consent provision within the meaning of that Article. S.I. 1972/538 (N.I. 1).

27.—(1) In this Act “scheduled offence” means an offence specified in Part I of Schedule 4 to this Act, subject, however, to any relevant note contained in that Part. The scheduled offences.

(2) Part II of that Schedule shall have effect with respect to offences related to those specified in Part I of that Schedule.

(3) The Secretary of State may by order amend that Schedule (whether by adding an offence to, or removing an offence from, either Part of that Schedule, or otherwise).

28.—(1) In this Act, except so far as the context otherwise requires— Interpretation.

“constable” includes any member of the Royal Naval, Military or Air Force Police;

PART IV

“dwelling-house” means any building or part of a building used as a dwelling ;

“enactment” includes an enactment of the Parliament of Northern Ireland ;

“explosive” means any article or substance manufactured for the purpose of producing a practical effect by explosion ;

“explosive substance” means any substance for the time being specified in regulations made under section 3 of the Explosives Act (Northern Ireland) 1970 ;

“firearm” includes an air gun or air pistol ;

“imitation firearm” means anything which has the appearance of being a firearm, whether capable of being discharged or not ;

“Ministry” means the Ministry of Home Affairs for Northern Ireland ;

“offensive weapon” means any article made or adapted for use for causing injury to or incapacitating a person ;

“proscribed organisation” means an organisation for the time being specified in Schedule 2 to this Act, including an organisation which is to be treated as a proscribed organisation by virtue of section 19(3) above ;

“public place” means a place to which for the time being members of the public have or are permitted to have access, whether on payment or otherwise ;

“scheduled offence” has the meaning ascribed to it by section 27 above ;

“terrorism” means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear ;

“terrorist” means a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism ;

“vehicle” includes a hovercraft.

(2) Any reference in this Act, except so far as the context otherwise requires, to an enactment shall be construed as a reference to that enactment as amended, applied or extended by or under any other enactment, including this Act.

(3) Any reference in this Act to an enactment of the Parliament of Northern Ireland or to an enactment which that Parliament has power to amend shall be construed as including a reference to any enactment of the Parliament of Northern Ireland passed after this Act and re-enacting the said enactment with or without modifications.

29.—(1) Any power to make orders or regulations conferred by this Act (except the powers to make orders conferred by Schedules 1 and 3 to this Act) shall be exercisable by statutory instrument. PART IV
Orders and regulations.

(2) Any power to make an order under any provision of this Act shall include power to vary or revoke any order under that provision.

(3) No order or regulations under this Act (except an order under either of the said Schedules) shall be made unless either a draft of the order or regulations has been approved by resolution of each House of Parliament or it is declared in the order or regulations that it appears to the Secretary of State that by reason of urgency it is necessary to make the order or regulations without a draft having been so approved.

(4) Orders and regulations under this Act (except an order under either of the said Schedules and except an order or regulations of which a draft has been so approved) shall be laid before Parliament after being made and, if at the end of the period of 40 days (computed in accordance with section 7(1) of the Statutory Instruments Act 1946) after the day on which the Secretary of State made an order or regulations a resolution has not been passed by each House approving the order or regulations in question, the order or regulations shall then cease to have effect (but without prejudice to anything previously done or to the making of a new order or new regulations). 1946 c. 36.

30.—(1) This Act shall come into force at the expiration of the period of two weeks beginning with the day on which it is passed. Commence-
ment,
duration,
expiry and
revival of
provisions
of this Act.

(2) The provisions of this Act, except sections 1, 9 and 25 to 31 and Schedule 5 to this Act, shall remain in force until the expiry of the period of one year beginning with its passing and shall then expire unless continued in force by an order under this section.

(3) The Secretary of State may by order provide—

- (a) that all or any of the said provisions which are for the time being in force (including any in force by virtue of an order under this section) shall continue in force for a period not exceeding one year from the coming into operation of the order ;
- (b) that all or any of the said provisions which are for the time being in force shall cease to be in force ; or
- (c) that all or any of the said provisions which are not for the time being in force shall come into force again and

PART IV

remain in force for a period not exceeding one year from the coming into operation of the order.

(4) The coming into force of any of the following provisions of this Act, that is to say, sections 2, 4, 5, 6 and 7, whether on the commencement of this Act or subsequently, shall not affect any trial on indictment where the indictment has been presented, or any summary trial which has started, before the coming into force of that provision, and any such trial shall be conducted as if the provision had not come into force.

(5) Where before the coming into force of section 4(1) above, whether on the commencement of this Act or subsequently, a person has been committed for trial for a scheduled offence and the indictment has not been presented, then, on the coming into force of that subsection, he shall—

- (a) if he was committed to a court of assize other than the Belfast City Commission, be treated as having been committed to the Commission; and
- (b) if he was committed to a county court other than the Belfast Recorder's Court, be treated as having been committed to the Belfast Recorder's Court.

(6) The expiry or cesser of any provision mentioned in subsection (4) above shall not affect the application of that provision to any trial on indictment where the indictment has been presented, or any summary trial which has started, before the expiry or cesser; and it is hereby declared that the expiry or cesser of section 4(2) above shall not affect any committal of a person for trial under that subsection to the Belfast City Commission, or the Belfast Recorder's Court, where the indictment has not been presented.

(7) On the expiry or cesser of any provision of this Act section 38(2) of the Interpretation Act 1889 (effect of repeals) shall apply as if the provision had been repealed by another Act and, in the case of section 24 above, any regulations made thereunder had been enactments.

31.—(1) This Act may be cited as the Northern Ireland (Emergency Provisions) Act 1973.

(2) The Civil Authorities (Special Powers) Act (Northern Ireland) 1922 and the Criminal Justice (Temporary Provisions) Acts (Northern Ireland) 1970 shall cease to have effect.

(3) The enactments specified in Schedule 5 to this Act (which include enactments which were obsolete or unnecessary before the passing of this Act) are hereby repealed to the extent specified in column 3 of that Schedule.

Short title,
repeals,
savings and
extent.
1889 c. 63.
1922 c. 5
(N.I.).

(4) Section 38 of the Interpretation Act 1889 (effect of repeals) shall apply to the repeal by this Act of any Act or enactment of the Parliament of Northern Ireland and to the cesser of any order or regulations made under any enactment repealed by this Act as it applies to the repeal of any Act or enactment of the Parliament of the United Kingdom. PART IV
1889 c. 63.

(5) Any instrument made, any direction or authorisation given or any other thing done under any enactment repealed by this Act or any order or regulations made under any such enactment shall, so far as it could have been made, given or done under any provision of this Act have effect as if it had been made, given or done under that provision.

(6) The repeal by this Act of section 1 of the Offences against the Person Act 1861 shall not affect the operation of sections 64, 65, and 68 of that Act which shall continue to apply in relation to murder as if this Act had not been passed.

(7) Neither any rule of law nor any enactment other than this Act nor anything contained in a commission issued for the trial of any person shall be construed as limiting or otherwise affecting the operation of any provision of this Act for the time being in force, but—

- (a) subject to the foregoing, any power conferred by this Act shall not derogate from Her Majesty's prerogative or any powers exercisable apart from this Act by virtue of any rule of law or enactment ; and
 - (b) subject to the foregoing and to section 30(6) above, a provision of this Act shall not affect the operation of any rule of law or enactment at a time when the provision is not in force.
- (8) This Act shall extend to Northern Ireland only.

SCHEDULES

Section 10.

SCHEDULE 1

DETENTION OF TERRORISTS

PART I

COMMISSIONERS AND APPEAL TRIBUNAL

1. For the purposes of this Act there shall be—

- (a) commissioners appointed by the Secretary of State; and
- (b) a Detention Appeal Tribunal (hereafter in this Schedule referred to as “the Tribunal”) whose members shall be appointed by the Secretary of State.

The Commissioners

2. There shall be such number of commissioners as the Secretary of State may determine.

3. A commissioner shall be a person who holds or has held judicial office in any part of the United Kingdom or is a barrister, advocate or solicitor, in each case of not less than ten years' standing in any part of the United Kingdom.

4.—(1) A commissioner shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

(2) A commissioner may at any time by notice in writing to the Secretary of State resign his office.

(3) The Ministry shall pay to the commissioners such remuneration and allowances as the Secretary of State may determine.

5. The Ministry shall appoint such officers and servants for the commissioners as the Secretary of State may determine.

The Detention Appeal Tribunal

6. The Tribunal shall consist of such number of members as the Secretary of State may determine, and the Secretary of State shall appoint one of them to be chairman and may appoint members to act as deputy chairmen.

7. A member of the Tribunal shall be a person who holds or has held judicial office in any part of the United Kingdom or is a barrister, advocate or solicitor, in each case of not less than ten years' standing in any part of the United Kingdom.

8. A commissioner may be appointed to be a member of the Tribunal, but shall not act as such in the case of an appeal against a decision of his.

9.—(1) A member of the Tribunal shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

(2) A member of the Tribunal may at any time by notice in writing to the Secretary of State resign his office.

SCH. 1

(3) The Ministry shall pay to the members of the Tribunal such remuneration and allowances as the Secretary of State may determine.

10. The Ministry shall appoint such officers and servants for the Tribunal as the Secretary of State may determine.

PART II

INTERIM CUSTODY ORDERS AND DETENTION ORDERS

Interim Custody Orders

11.—(1) Where it appears to the Secretary of State that a person is suspected of having been concerned in the commission or attempted commission of any act of terrorism or in the direction, organisation or training of persons for the purpose of terrorism, the Secretary of State may make an interim custody order for the temporary detention of that person.

(2) An interim custody order of the Secretary of State shall be signed by the Secretary of State or a Minister of State or Under-Secretary of State.

(3) A person shall not be detained under an interim custody order for a period of more than twenty-eight days from the date of the order unless his case is referred by the Chief Constable to a commissioner for determination, and where a case is so referred the person concerned may be detained under the order only until his case is so determined.

(4) A reference to a commissioner shall be by notice in writing, of which a copy shall be sent to the Secretary of State and to the person to whom it relates.

Adjudication by Commissioner

12. Where the case of a person detained under an interim custody order (in this Part of this Schedule referred to as "the respondent") is referred to a commissioner, the commissioner shall enquire into that case for the purpose of deciding whether or not he is satisfied that—

(a) the respondent has been concerned in the commission or attempted commission of any act of terrorism or the direction, organisation or training of persons for the purpose of terrorism; and

(b) his detention is necessary for the protection of the public.

13. Not less than seven days before the hearing of a case for determination under paragraph 12 above, the respondent shall be served with a statement in writing as to the nature of the terrorist activities which are to be the subject of the inquiry.

SCH. 1 14.—(1) Proceedings before a commissioner shall take place in private.

(2) The respondent shall, subject to paragraph 17 below, be present on the hearing of a reference unless the commissioner directs his removal on the grounds of his disorderly conduct.

15. On the hearing of a reference, the respondent shall be entitled to give and adduce evidence and may make representations to the commissioner, whether orally or in writing, and may be represented by counsel or a solicitor.

16. On the hearing of a reference a commissioner may—

(a) receive oral, documentary or other evidence, notwithstanding that the evidence would be inadmissible in a court of law;

(b) question any person, including the respondent;

(c) cause inquiries to be made in relation to any matter.

17. Where, in relation to any part of the proceedings, it appears to the commissioner that it would be contrary to the interests of public security or might endanger the safety of any person for that part of the proceedings to take place in the presence of the respondent, the respondent and his representatives shall be excluded accordingly.

18. Where any part of the proceedings takes place in the absence of the respondent and his representatives in pursuance of paragraph 17 above, the commissioner shall, in so far as the needs of public security and the safety of persons permit, inform the respondent and his representatives of the substance of the matters dealt with during that part of the proceedings.

19. A commissioner may require any person to give evidence on oath or by affirmation, and for that purpose an oath or affirmation in due form may be administered.

20.—(1) A commissioner—

(a) may by summons in writing require any person to attend as a witness at such time and place as may be specified in the summons; and

(b) may require any person to answer any question or produce any documents in his custody or under his control which relate to any matter in question on the reference,

but a person shall not be required by a summons to go more than ten miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

(2) A person who, without reasonable excuse, fails to comply with a summons or requirement under sub-paragraph (1) above shall be liable on summary conviction to a fine not exceeding £200 or to imprisonment for a term not exceeding six months, or both.

21. A commissioner may order the payment by the Ministry to any person of such sums as appear to the commissioner to be

reasonable in respect of any costs or expenses incurred by that person in connection with a reference, including the costs of legal representation of a respondent.

SCH. 1

22. A commissioner shall keep or cause to be kept a record of the proceedings before him, of which a copy shall be sent to the Secretary of State if requested by him.

23. Subject to the provisions of this Part of this Schedule, a commissioner may regulate his own procedure.

Detention Orders

24. Where a commissioner decides that he is satisfied in accordance with the provisions of paragraph 12 above, he shall make a detention order for the detention of the respondent, and otherwise shall direct his release.

25.—(1) A detention order shall be signed by the commissioner and shall contain a statement of the grounds on which it is made.

(2) A copy of a detention order shall be sent to the respondent and to the Secretary of State.

PART III

APPEALS

Notice of appeal

26.—(1) Where a detention order has been made in the case of any person, he may within twenty-one days of the making of the order appeal by notice in writing to the Tribunal.

(2) The Tribunal shall cause a copy of the notice of appeal to be sent to the Chief Constable and to the Secretary of State.

27.—(1) A notice of appeal shall indicate the grounds of appeal and, where appropriate, the nature of any fresh evidence which the appellant wishes to tender on the hearing of the appeal.

(2) Where notice of appeal has been given there shall be transmitted to the Tribunal a copy of the detention order and a copy of the record of the proceedings before the commissioner, which shall be in such a form as to indicate any part of the proceedings which took place in the absence of the appellant.

(3) An appellant shall be entitled to receive a copy of the record of the proceedings before the commissioner, excluding any part of the proceedings which under paragraph 17 above took place in the absence of the appellant.

Proceedings on appeal

28. Subject to paragraph 8 above, the Tribunal shall be deemed to be duly constituted if it consists of three members (or a greater

SCH. 1 uneven number of members); and the determination of any question before the Tribunal shall be according to the opinion of the majority of the members hearing the appeal.

29. The hearing of an appeal shall be in private.

30. On the hearing of an appeal—

- (a) the Tribunal shall consider the record of the proceedings before the commissioner together with any fresh evidence which may be tendered with the consent of the Tribunal;
- (b) the appellant may be represented by counsel or a solicitor; and
- (c) the appellant shall, subject to paragraph 17 above (as applied by paragraph 33 below), be entitled to be present unless the Tribunal direct his removal on the grounds of his disorderly conduct.

31. The Tribunal may require the attendance of the appellant if this appears to them to be necessary.

32. On an appeal, the Tribunal shall, if they are of the opinion that the commissioner's decision should be set aside, allow the appeal and direct the discharge of the appellant; and otherwise they shall dismiss the appeal.

33. Paragraphs 16 to 21 above shall with any necessary modifications, have effect in relation to an appeal as they have effect in relation to proceedings before a commissioner.

34. Subject to the provisions of this Schedule, the Tribunal may regulate their own procedure.

PART IV

SUPPLEMENTAL

Reference for review

35.—(1) The Secretary of State may at any time refer to a commissioner the case of any person who is for the time being detained under a detention order, and shall so refer the case of any person who has been detained for one year since the making of a detention order or for six months from the determination of the most recent review under this paragraph.

(2) On any such reference the commissioner shall review the case and, unless he considers that the person's continued detention is necessary for the protection of the public, shall direct his discharge.

(3) In determining whether a person has been detained for one year or for six months no account shall be taken of any time during which he has been at liberty—

- (a) unlawfully; or
- (b) in consequence of a direction given by the Secretary of State under paragraph 36(2) below.

(4) Paragraphs 14 to 23 above shall have effect in relation to the proceedings of a commissioner under this paragraph.

SCH. 1

Release of persons detained

36.—(1) The Secretary of State may direct the discharge at any time of a person detained under an interim custody order.

(2) The Secretary of State may direct the release, subject to such conditions (if any) as he may specify, of a person detained under a detention order.

(3) The Secretary of State may recall to detention a person released subject to conditions under sub-paragraph (2) above, and a person so recalled may be detained under the original detention order.

Supplementary provisions as to detention

37.—(1) A person required to be detained under an interim custody order or a detention order may be detained in a prison or in some other place approved for the purposes of this paragraph by the Secretary of State.

(2) A person for the time being having custody of a person required to be detained as aforesaid shall have all the powers, authorities, protection and privileges of a constable.

(3) Subject to any directions of the Secretary of State, a person detained as aforesaid shall be treated as nearly as may be as if he were a prisoner detained in a prison on remand and any power of temporary removal for judicial, medical or other purposes shall apply accordingly.

(5) If any person—

(a) who is detained under an interim custody order or detention order, escapes ; or

(b) fails to return to detention when recalled under paragraph 36(3) above.

he may be arrested without warrant by any constable or any member of Her Majesty's Forces on duty.

Offences of escape, rescue, etc.

38. Any person who—

(a) being detained under an interim custody order or a detention order, escapes ;

(b) rescues any person detained as aforesaid, or assists a person so detained in escaping or attempting to escape ; or

(c) knowingly harbours any person required to be detained under an interim custody order or detention order, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody,

shall be liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or both.

SCH 1

Interpretation

39. In this Schedule—

“Chief Constable” means the Chief Constable or an assistant chief constable of the Royal Ulster Constabulary ;

“detention order” means an order made by a commissioner for the detention of a person ;

“interim custody order” means an order made by the Secretary of State for the temporary detention of a person.

Section 19.

SCHEDULE 2

PROSCRIBED ORGANISATIONS

The Irish Republican Army.

Cumann na m'Ban.

Fianna na h'Eireann.

Saor Eire.

Sinn Fein.

The Ulster Volunteer Force.

Section 24.

SCHEDULE 3

THE NORTHERN IRELAND (EMERGENCY PROVISIONS)
REGULATIONS 1973*Title*

1. These regulations may be cited as the Northern Ireland (Emergency Provisions) Regulations 1973.

Road traffic

2. The Secretary of State may by order prohibit, restrict or regulate in any area the use of vehicles or any class of vehicles on highways or the use by vehicles or any class of vehicles of roads or classes of roads specified in the order, either generally or in such circumstances as may be so specified.

Railways

3. The Secretary of State, or any officer of the Royal Ulster Constabulary not below the rank of assistant chief constable, may direct any person having the management of a railway to secure that any train specified in the direction or trains of any class so specified shall stop, or shall not stop, at a station or other place so specified.

Funerals

SCH. 3

4. Where it appears to an officer of the Royal Ulster Constabulary not below the rank of chief inspector that a funeral may occasion a breach of the peace or serious public disorder, or cause undue demands to be made on Her Majesty's forces or the police, he may give directions imposing on the persons organising or taking part in the funeral such conditions as appear to him to be necessary for the preservation of public order including (without prejudice to the generality of the foregoing) conditions—

- (a) prescribing the route to be taken by the funeral ;
- (b) prohibiting the funeral from entering any place specified in the directions ;
- (c) requiring persons taking part in the funeral to travel in vehicles.

Closing of licensed premises, clubs, etc.

5. The Secretary of State may by order require that premises licensed under the Licensing Act (Northern Ireland) 1971, premises registered under the Registration of Clubs Act (Northern Ireland) 1967 or any place of entertainment or public resort shall be closed and remain closed, either for an indefinite period or for a period, or until an event, specified in the order or shall be closed at a particular time either on all days or on any day so specified.

SCHEDULE 4

Section 27.

THE SCHEDULED OFFENCES

PART I

SUBSTANTIVE OFFENCES

Common law offences

- 1. Murder, subject to note 1 below.
- 2. Manslaughter, subject to note 1 below.
- 3. The common law offence of arson.
- 4. The common law offence of riot.

Malicious Damage Act 1861

1861 c. 97.

5. Offences under the following provisions of the Malicious Damage Act 1861—

- (a) section 1 (setting fire to church, etc.) ;
- (b) section 2 (setting fire to a dwelling house while a person is inside) ;
- (c) section 3 (setting fire to house, outhouse or business or farming premises with intent to injure or defraud any person) ;
- (d) section 4 (setting fire to railway station, etc.) ;
- (e) section 5 (setting fire to any public building) ;

28 c. 53 *Northern Ireland (Emergency Provisions) Act 1973*

SCH. 4

- (f) section 6 (setting fire to other buildings);
- (g) section 7 (setting fire to things in or near a building);
- (h) section 9 (destroying or damaging building while a person is inside or so as to endanger life);
- (i) section 10 (placing explosive in or near a building with intent to destroy or damage property);
- (j) section 11 (riotous demolition of building);
- (k) section 12 (riotously injuring building, machinery, etc.);
- (l) section 16 (setting fire to crops, tree plantations, etc.);
- (m) section 17 (setting fire to haystacks, etc.);
- (n) section 45 (placing explosive in or near ship with intent to damage it or other property).

1861 c. 100.

Offences against the Person Act 1861

6. Offences under the following provisions of the Offences against the Person Act 1861, subject as mentioned below,—

- (a) section 18 (wounding with intent to cause grievous bodily harm) subject to note 2 below;
- (b) section 20 (causing grievous bodily harm) subject to note 2 below;
- (c) section 28 (causing grievous bodily harm by explosives);
- (d) section 29 (causing explosion or sending explosive substance or throwing corrosive liquid with intent to cause grievous bodily harm);
- (e) section 30 (placing explosive near building or ship with intent to do bodily injury);
- (f) section 47 (assault occasioning actual bodily harm) subject to note 2 below.

1883 c. 3.

Explosive Substances Act 1883

7. Offences under the following provisions of the Explosive Substances Act 1883—

- (a) section 2 (causing explosion likely to endanger life or damage property);
- (b) section 3 (attempting to cause any such explosion, and making or possessing explosive with intent to endanger life or damage property);
- (c) section 4 (making or possessing explosives in suspicious circumstances).

1968 c. 28 (N.I.).

Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968

8. Offences under section 9 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (riotous behaviour) subject to note 3 below.

Firearms Act (Northern Ireland) 1969

SCH. 4

9. Offences under the following provisions of the Firearms Act 1969 c. 12 (N.I.) (Northern Ireland) 1969—

- (a) section 1 (possessing, purchasing or acquiring firearms or ammunition without certificate);
- (b) section 2 (manufacturing, dealing in, repairing, etc., firearms or ammunition without being registered);
- (c) section 3 (shortening barrel of shotgun or converting imitation firearm into firearm);
- (d) section 4 (manufacturing, dealing in or possessing machine gun or pistol, or weapon discharging, or ammunition containing, noxious substance);
- (e) section 14 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property);
- (f) section 15 (use or attempted use of firearm or imitation firearm to prevent arrest of self or another, etc.);
- (g) section 16 (carrying firearm or imitation firearm with intent to commit indictable offence or prevent arrest of self or another);
- (h) section 17 (carrying firearm, etc., in public place);
- (i) section 19 (possession of firearm by person who has been sentenced to imprisonment, etc., and sale of firearm to such a person);
- (j) section 19A (possessing firearm or ammunition in suspicious circumstances).

Theft Act (Northern Ireland) 1969

1969 c. 16 (N.I.).

10. Offences under the following provisions of the Theft Act (Northern Ireland) 1969, subject as mentioned below,—

- (a) section 8 (robbery) subject to note 4 below;
- (b) section 10 (aggravated burglary) subject to note 4 below.

Protection of the Person and Property Act (Northern Ireland) 1969 1969 c. 29 (N.I.).

11. Offences under the following provisions of the Protection of the Person and Property Act (Northern Ireland) 1969—

- (a) section 1 (intimidation);
- (b) section 2 (making or possessing petrol bombs, etc.);
- (c) section 3 (throwing or using petrol bombs, etc.).

This Act

12. Offences under the following provisions of this Act—

- (a) section 19;
- (b) section 20;
- (c) paragraph 38 of Schedule 1.

SCH. 4

NOTES

1. Neither murder nor manslaughter shall be a scheduled offence in any particular case in which the Attorney General for Northern Ireland certifies that it is not to be treated as a scheduled offence.
- 1861 c. 100. 2. An offence under section 18, 20 or 47 of the Offences against the Person Act 1861 shall not be a scheduled offence in any particular case in which the Attorney General for Northern Ireland certifies that it is not to be treated as a scheduled offence.
- 1968 c. 28 (N.I.). 3. An offence under section 9 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 shall be a scheduled offence only where the maximum term of imprisonment is eighteen months by virtue of section 22 above.
4. Robbery and aggravated burglary shall be scheduled offences only where it is charged that an explosive, firearm, imitation firearm or offensive weapon was used to commit the offence.

PART II

INCHOATE AND RELATED OFFENCES

13. Each of the following offences, that is to say—

- (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in Part I of this Schedule (hereafter in this paragraph referred to as a substantive offence);
- (b) attempting or conspiring to commit a substantive offence;
- 1967 c. 18 (N.I.). (c) an offence under section 4 of the Criminal Law Act (Northern Ireland) 1967 of doing any act with intent to impede the arrest or prosecution of a person who has committed a substantive offence;

shall be treated for the purposes of this Act as if it were the substantive offence.

SCHEDULE 5

REPEALS

Acts

Chapter	Short title	Extent of repeal
4 Geo. 4. c. 48.	The Judgment of Death Act 1823.	In section 1, the words "capital murder and".
7 Will. 4 & 1 Vict. c. 88.	The Piracy Act 1837.	In section 2, the words "as in cases of capital murder".
24 & 25 Vict. c. 100.	The Offences against the Person Act 1861.	Section 1.
31 & 32 Vict. c. 24.	The Capital Punishment Amendment Act 1868.	In section 2, the words from "sentenced" to "murder".

Chapter	Short title	Extent of repeal
50 & 51 Vict. c. 20.	The Criminal Law and Procedure (Ireland) Act 1887.	In section 5, the words from "This section" to "associations". Sections 6 and 7. In section 12, in subsection (2), the words "and every special proclamation", in both places where they occur; in subsection (3), the words "special proclamations", in the first two places where they occur, the words "or a special proclamation" and the words "or special proclamation"; and in subsection (4), the words "not being a special proclamation". In section 13, the words "or any special proclamation". In section 17, the words "or special proclamation". In section 18, the words "and dangerous associations". The whole Act.
12 & 13 Geo. 5. c. 5 (N.I.).	The Civil Authorities (Special Powers) Act (Northern Ireland) 1922.	
16 & 17 Geo. 5. c. 8 (N.I.).	The Emergency Powers Act (Northern Ireland) 1926.	Section 3.
23 & 24 Geo. 5. c. 12 (N.I.).	The Civil Authorities (Special Powers) Act (Northern Ireland) 1933.	The whole Act.
4 & 5 Geo. 6. c. 11 (N.I.).	The Ministries Act (Northern Ireland) 1940.	The whole Act.
1943 c. 2 (N.I.).	The Civil Authorities (Special Powers) Act (Northern Ireland) 1943.	The whole Act.
1945 c. 15 (N.I.).	The Criminal Justice Act (Northern Ireland) 1945.	In section 39, the words "capital murder murder".
3 & 4 Eliz. 2. c. 18.	The Army Act 1955.	In section 215(4), the words "and to rules made under that Act", the word "respectively" and the words "and to any rules under that Act as in force in Northern Ireland".
3 & 4 Eliz. 2. c. 19.	The Air Force Act 1955.	In section 213(4), the words "and to rules made under that Act", the word "respectively" and the words "and to any rules under that Act as in force in Northern Ireland".
5 & 6 Eliz. 2. c. 53.	The Naval Discipline Act 1957.	In section 124(2), the words from "to section seven" to "said section seven", the words "and that section" and

SCH. 5

Chapter	Short title	Extent of repeal
5 & 6 Eliz. 2. c. 53— <i>cont.</i>	The Naval Discipline Act 1957— <i>cont.</i>	the words "and to any rules under that section as so in force".
1958 c. 9 (N.I.).	The Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1958.	Section 4.
1964 c. 21 (N.I.).	The Magistrates' Courts Act (Northern Ireland) 1964.	In section 2(2), the words from "or section 3(4)" to "1922". In section 41(1), the words from "or under the Civil" to "thereunder".
1966 c. 20 (N.I.).	The Criminal Justice Act (Northern Ireland) 1966.	Sections 9 to 11.
1967 c. 18 (N.I.).	The Criminal Law Act (Northern Ireland) 1967.	In section 6, in subsection (4), the words from "Without" to "this section"; subsection (5); and in subsection (7), the words from "and section" to "(5)". In Schedule 1, paragraph 2; in paragraph 5, the words "capital murder and"; paragraph 10; paragraph 14(a); paragraph 16; paragraph 21; and in paragraph 22(c), the words "capital murder".
1968 c. 34 (N.I.).	The Children and Young Persons Act (Northern Ireland) 1968.	In section 51(1)(a), the words "named in the order for committal". In section 73(1), the words "under section 9(2) of the Criminal Justice Act (Northern Ireland) 1966". Section 83(2) to (4). Section 85(3)(a). In section 86, in subsection (1) the words "or the school to which the child or young person is to be sent" and the word "school", in the last place where it occurs, and subsection (2). In section 132, in subsection (3) the words from "and the Ministry" to the end of the subsection, and subsection (8). In Schedule 5, in paragraph 12, in sub-paragraph (1), the words from "or to be" to the end of the sub-paragraph, in sub-paragraph (2) the words "or transferred", and sub-paragraph (3).

Chapter	Short title	Extent of repeal
1970 c. 22 (N.I.).	The Criminal Justice (Temporary Provisions) Act (Northern Ireland) 1970.	The whole Act.
1970 c. 33 (N.I.).	The Criminal Justice (Temporary Provisions) (Amendment) Act (Northern Ireland) 1970.	The whole Act.
1971 c. 12 (N.I.).	The Public Order (Amendment) Act (Northern Ireland) 1971.	Section 2(3).
1971 c. 25 (N.I.).	The Firearms (Amendment) Act (Northern Ireland) 1971.	Section 3(2) and (3).

Orders

Number	Short title	Extent of repeal
S.I. 1972 No. 538 (N.I. 1).	The Prosecution of Offences (Northern Ireland) Order 1972.	In Article 7(1), the words from "or section 3(2)" to the end.
S.I. 1972 No. 1632 (N.I. 15).	The Detention of Terrorists (Northern Ireland) Order 1972.	The whole Order.

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Report of a Committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland

Chairman: Lord Gardiner

*Presented to Parliament by
the Secretary of State for Northern Ireland
by Command of Her Majesty
January 1975*

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INTRODUCTION

To the Right Honourable Merlyn Rees MP, Her Majesty's Secretary of State for Northern Ireland.

We were appointed:

“to consider what provisions and powers, consistent to the maximum extent practicable in the circumstances with the preservation of civil liberties and human rights, are required to deal with terrorism and subversion in Northern Ireland, including provisions for the administration of justice, and to examine the working of the Northern Ireland (Emergency Provisions) Act 1973; and to make recommendations.”

We considered it important to give as many organisations and individuals as possible the opportunity of making their views known to us, and, in view of the urgency of our task, we initially asked for written submissions to reach us before 30th August 1974; we later extended that deadline. We issued a press notice on 20th June giving details of the Committee and requesting submissions. This was printed in three newspapers on Friday 21st June 1974: the *Irish News*, the *Belfast Telegraph* and the *Belfast Newsletter*. No newspapers in England, Scotland or Wales published our press notice, and we had therefore to place paid advertisements in *The Times* and *The Guardian*. We also issued written invitations to the leading political parties in Northern Ireland and to all those organisations which we knew would be concerned in the problems of human rights and civil liberties in Northern Ireland, and we specifically requested information from the security forces, the judiciary and the Northern Ireland Office in London and Belfast.

We received written submissions from 61 different individuals, groups of individuals and organisations and considered each of them carefully; we invited 36 of them to give oral evidence, including everyone who expressed a wish to do so. A number of organisations submitted more than one memorandum or were represented before us by more than one individual; in all we considered 157 memoranda and heard 97 witnesses. A full list of those organisations and individuals who gave evidence is in Appendix A.

At our first meeting on 19th June 1974 we decided that, in the interests of security and of the protection of witnesses, all our meetings would be held in private and that we would not publish the evidence we received. We subsequently held ten hearings of one, two or three days' duration; five of these were held in Northern Ireland and the remainder in London. After the conclusion of these hearings we met for three further discussions, each lasting three or four days, in order to prepare this Report. In all the Committee met for a total of 29 days. We also visited Crumlin Road, the Maze and Armagh Prisons

where we met staff, detainees and prisoners, including women and young persons. We visited Army posts and Royal Ulster Constabulary stations to meet and talk to the security forces on the ground.

During the course of evidence we heard some complaints against the security forces, the courts and the administration. We referred these to the bodies concerned for their comments. We have commented on some of these complaints in the relevant part of our Report.

As we were completing our Report Parliament passed the Prevention of Terrorism (Temporary Provisions) Act 1974; we have reviewed our findings in the light of its provisions at the appropriate points in our Report.

We all desire to express our gratitude and appreciation to Mr Gerald Watson and Mr J Howard-Drake of the Northern Ireland Office; Mr P Coulson and Mr J M Steele, the Secretaries to the Committee; Mr A R Marsh, who at a critical point prepared abstracts of all our documents; Mr A H Dent and Mr M Hunter, and other members of the supporting staffs, including the secretaries who typed for long hours, often at night, to enable us to complete our Report on time. We owe a great deal to their efficiency and unsparing help. The frequency with which the Committee met and the large body of evidence, both written and oral, which we received combined to make the task of those who helped us particularly arduous. No Committee could have been better served.

Subject to the reservation of Lord MacDermott, our Report is unanimous.

CHAPTER 1

GENERAL CONSIDERATIONS

1. The situation in Northern Ireland has altered considerably since Lord Diplock's Commission was asked in the autumn of 1972, as a matter of urgency, to consider means of protecting the community against terrorism. The Report of this Commission led to the passage of the Northern Ireland (Emergency Provisions) Act 1973 (hereafter "the 1973 Act"), which has since formed the basis of much of the administration of criminal justice in Northern Ireland, and which we have been asked, among other things, to scrutinise with a view to amendment where necessary.

2. While shooting and bombing in Northern Ireland remain high by any standards, they have been much reduced over the last three years. Explosions, which totalled 1,382 in 1972, were down to 973 in 1973 and have fallen to 648 for the first eleven months of 1974. Shootings, which totalled 10,628 in 1972, fell to 5,018 in 1973 and to 3,052 for the first eleven months of 1974. Punishment shootings, however, such as "executions" and "knee-cappings," have recently increased: in the first eleven months of this year there have been 122 knee-cappings, as compared with 71 for the similar period in 1973. Details are shown in Appendix B.

3. On the political front, however, progress has been erratic. During 1973, as a result of patient inter-communal diplomacy by the then Secretary of State for Northern Ireland, a new constitution, based on the principle of "power-sharing", was agreed upon and promulgated. An executive, containing for the first time representatives of both the majority and minority communities in Northern Ireland, came into office on 1st January 1974. But a politically motivated strike in May 1974 brought about its downfall and a return to direct rule from Westminster. The Secretary of State shortly thereafter announced that a Constitutional Convention would be convened, composed of representatives elected for the purpose by a fresh election in Northern Ireland. The purpose of this Convention will be to consider, "what provision for the government of Northern Ireland is likely to command the most widespread acceptance throughout the community there".

Political Assumptions

4. Our work has been concerned primarily with the operation of the law, but it has had to be undertaken in something of a political vacuum, when the future arrangements for the government of Northern Ireland have yet to be determined and the elections to the Constitutional Convention have still to take place. Moreover, it has coincided with a time of growing questioning in Britain on the future relationship of Northern Ireland to the rest of the United Kingdom. It is therefore essential, before setting out our recommendations about the law and its administration, to make clear the political assumptions to which they are related. These include the following:

- (a) Northern Ireland will remain part of the United Kingdom for the foreseeable future, whatever form of political devolution from

Westminster to Stormont may eventually command consensus. It follows that the Government at Westminster and the people of Great Britain cannot divorce themselves from responsibility for the political, social and economic development of Northern Ireland.

- (b) Until there is a marked reduction in violence in Northern Ireland which permits a significant reduction in the role of the Army, security must remain the responsibility of the Government of the United Kingdom, even though a wide range of other responsibilities may be devolved to Stormont.
- (c) Northern Ireland is not a homogeneous society. It consists of two communities which, despite many characteristics held in common, are divided in culture, religion and political sympathies. In a plural society such as this, the normal conventions of majority rule will not work. No political framework can endure unless (i) both communities share in the responsibility of administering Northern Ireland, and (ii) recognition is given to the different national inheritances of the two communities.

5. The first of these assumptions and its relation to the others may profit from some elaboration. Northern Ireland, with just over one and a half million people, is too small a community to undertake the restoration of its own stability without support from the rest of the United Kingdom. Its economic resources are limited, and a withdrawal of aid from the Westminster government could lead to the collapse of certain industries, which would increase unemployment and sow the seeds of further violence. The pool of skilled manpower, from which such essential services as the police and the prison service have to be recruited, is limited. It is made even more limited by the deep community divisions in the region.

6. In considering the administration of justice in Northern Ireland, we are charged to consider two matters:

- (a) the powers needed to deal with terrorism and subversion;
- (b) the preservation of civil liberties and human rights.

We now turn to some general remarks on each of these subjects.

Terrorism and Subversion

7. Political dissent is as old as political society; its roots may be resistance to oppression or simply idealism. The new factor in the long history of dissent is the effectiveness of the weapons its more extreme proponents can command. Terrorism is probably more widespread in both the industrial and developing world than at any other time in recent history. There are a number of reasons for this, which include the relative ease with which arms, money and terrorist skills can cross frontiers, the effect of mass communications in both facilitating and glamourising violence, and above all the vulnerability of complex industrial societies. **But the greater ease with which terrorism can be organised does not legitimise it.**

8. This is particularly evident in the case of Northern Ireland. To work through the process of political persuasion for a united Ireland, a Northern

Ireland integrated with the United Kingdom or even a sovereign Northern Ireland is quite legitimate. But the terrorist organisations reject the democratic process and they can only embitter relations between Britain and Ireland. They cannot bludgeon the British out of Ireland and, as the events of November 1974 have proved, the extension of terrorism to Britain simply increases the resolution of the British. They can offer no gifts to the people of Northern Ireland by way of greater freedom, security, or prosperity which the people cannot now attain by legal and democratic means. Moreover, they command the support of only a small fraction of either the minority or the majority community in Northern Ireland. Because they are attempting to destroy Northern Ireland as a political society, terrorists who break the law—which in Northern Ireland gives greater protection to the accused than in most disturbed communities—are not heroes but criminals; not the pioneers of political change but its direst enemies.

9. The same is true of those who engage in subversion; who participate in attempts to undermine the authority of government or change its policy by forceful or obstructive means. Strong penalties already exist for those who devise or employ such tactics. The crime of treason felony, for instance, which is punishable by life imprisonment has been on the statute book for over a century to deal with those who intimidate Parliament. Yet the most effective protection against the development of a subversive situation lies elsewhere: in the recognition by government that it must act with speed to demonstrate its determination to sustain its authority, and in the recognition on the part of the public at large that it is they—not some remote official body—who are the target and will be the victims of subversive action.

10. **There is one aspect of the problem of communal conflict which should not be overlooked in this context. It involves the special international obligations of the Government of the United Kingdom.** In the first place the United Kingdom and the Republic of Ireland are both members of the European Community, whose members explicitly recognise an even higher degree of obligation to co-operate than is the case between sovereign states in general (as expressed, for instance, in section 224 of the Treaty of Rome which specifically covers situations of internal disturbance in a member country). Secondly, the United Kingdom has been for over 25 years a leading member of the North Atlantic Alliance, whose function, as reiterated regularly in other contexts, is purely defensive. Consequently, in the case of any hostile action on the part of either the majority or the minority community against the other, which implied even the risk of civil war in Ulster or of organised violence spreading across the borders of the Republic, the Government of the United Kingdom would be obliged to deploy all the force at its disposal against such an action in order to honour its international as well as to discharge its domestic responsibilities.

11. The presence of influential communities of Irish descent in many parts of the English-speaking world means that a number of Britain's allies and Commonwealth partners have a keen interest in the stability of communal relations in Northern Ireland. Yet some of these same Irish communities have themselves helped to sustain violence there by their support for the para-military organisations.

12. The greater ease with which terrorism and subversion can now be organised, and the degree of fear it can generate in an otherwise peaceful society like Northern Ireland, make it unwise to compare the present emergency with similar troubles in Ulster in the inter-war years or in the 1950s. Terrorism and subversion in Northern Ireland can only be defeated, or guarded against, by the energetic pursuit of measures against them by the Government, and—equally important—of continued, parallel progress in other fields of social, political and economic activity, especially of community relations as a whole.

13. Northern Ireland is now subject to direct rule from Westminster. This has been the position for many months and is likely to be the position for some months to come. **Direct rule imposes upon Westminster the responsibility for policy making, policy implementation and the supervision of administrative services in many fields which are likely to become devolved powers at some future date. The full backing of the United Kingdom as a whole, together with all the necessary resources, must be made available to discharge these responsibilities.** There must be no question of the responsibilities being regarded as transitory, since this will result in a lack of will, thus contributing to pessimism and frustration.

14. The struggle in Northern Ireland is only part of a larger conflict. The Rule of Law is presently under attack in many places throughout the world. Sometimes this takes the form of blatant terrorism; sometimes more sophisticated methods are employed. But where the attack, whatever its nature, succeeds, ordered democratic government is in jeopardy. The Rule of Law must therefore be maintained in Northern Ireland not only for the sake of its people, but for the sake of all those in the United Kingdom and beyond who want freedom and peace instead of anarchy.

Civil Liberties and Human Rights

15. Our terms of reference require us to consider the problem of terrorism and subversion outlined above with due consideration for the preservation of civil liberties and human rights. We have been set the difficult task of maintaining a double perspective; for, while there are policies which contribute to the maintenance of order at the expense of individual freedom, the maintenance without restriction of that freedom may involve a heavy toll in death and destruction. Some of those who have given evidence to us have argued that such features of the present emergency provisions as the use of the Army in aid of the civil power, detention without trial, arrest on suspicion and trial without jury are so inherently objectionable that they must be abolished on the grounds that they constitute a basic violation of human rights. We are unable to accept this argument. While the liberty of the subject is a human right to be preserved under all possible conditions, it is not, and cannot be, an absolute right, because one man may use his liberty to take away the liberty of another and must be restrained from doing so. Where freedoms conflict, the state has a duty to protect those in need of protection.

16. The European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 sets out in Article 5 the general right of liberty and security of persons; but Article 17 specifically negates the right “to engage

in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein". Article 15 gives any High Contracting Party the right to derogate from its obligations under Article 5 "in time of war or any other public emergency to the extent strictly required by the exigencies of the situation". The United Kingdom ratified the European Convention in 1951, and has given due notice of derogation necessary to deal with terrorism in Northern Ireland. **The 1973 Act is therefore not in breach of international agreement.**

17. The suspension of normal legal safeguards for the liberty of the subject may sometimes be essential, in a society faced by terrorism, to counter greater evils. But if continued for any period of time it exacts a social cost from the community; and the price may have to be paid over several generations. It is one of the aims of terrorists to evoke from the authorities an over-reaction to the violence, for which the terrorists are responsible, with the consequence that the authorities lose the support of those who would otherwise be on the side of government.

18. In the present situation there are neighbourhoods in Northern Ireland where natural social motivation is being deployed against lawful authority rather than in support of it. Any good society is compounded of a network of natural affection and loyalties; yet we have seen and heard of situations in which normal human responses such as family affection, love of home, neighbourliness, loyalty to friends and patriotism are daily invoked to strengthen terrorist activity.

19. The imposition of order may be successful in the short term; but in the long term, peace and stability can only come from that consensus which is the basis of law. The tragedy of Northern Ireland is that crime has become confused with politically motivated acts. The common criminal can flourish in a situation where there is a convenient political motive to cover anti-social acts; and the development of a "prisoner-of-war" mentality among prisoners with social approval and the hope of an amnesty, lends tacit support to violence and dishonesty.

20. We acknowledge the need for firm and decisive action on the part of the security forces; but violence has in the past provoked a violent response. The adoption of methods of interrogation "in depth", which involved forms of ill-treatment that are described in the Compton Report (Cmnd 4823), did not last for long. Following the Report of the Parker Committee in 1972 (Cmnd 4901) these methods were declared unlawful and were stopped by the British Government; but the resentment caused was intense, widespread and persistent.

21. **The continued existence of emergency powers should be limited both in scope and duration.** Though there are times when they are necessary for the preservation of human life, they can, if prolonged, damage the fabric of the community, and they do not provide lasting solutions. **A solution to the problems of Northern Ireland should be worked out in political terms, and must include further measures to promote social justice between classes and communities. Much has been done to improve social conditions in recent years, but much remains to be done.** Though these matters, strictly speaking, lie outside our terms of reference, we should like to see a number of developments: the implementation of the

recommendations of the van Straubenze Report on Discrimination in the Private Sector of Employment (now eighteen months old); further improvements in housing; and a new and more positive approach to community relations. Consideration should be given to the enactment of a Bill of Rights. Measures of social reform may not produce immediate results in the reduction of violence. In Northern Ireland memories are long, and past oppression serves to colour present experience; but a more united community is the only real answer to the dilemma of maintaining peace while preserving liberty.

CHAPTER 2

TRIAL PROCEDURES

22. We now come on to the detailed consideration of the provisions and powers required in the present emergency in Northern Ireland. In this chapter we consider the provisions of Part I of the 1973 Act and related matters, and in the following chapters we consider the provisions in the other parts of the 1973 Act. The main exception to this arrangement is our discussion of prisons. This subject was not covered in the 1973 Act; but we consider it of sufficient importance to discuss in a chapter of its own, which we place immediately before our consideration of detention.

Abolition of Capital Punishment for Murder

23. Section 1 of the 1973 Act abolished the death penalty for those categories of murder in Northern Ireland still subject to it; it had already been abolished for some years in the rest of the United Kingdom. None of those who submitted memoranda to us, and only two of the 97 witnesses we saw, both from the same group, advocated its return for terrorist offences. We are only concerned with the position in Northern Ireland. Experience in all parts of Ireland has shown that the use of capital punishment tends to lead sections of the public to regard those executed as martyrs. We believe that the reintroduction of capital punishment would be likely to cost the lives of soldiers, police and civilians. As always with capital punishment, there would be the inevitable difficulty in deciding who, in the field of accessories, would be subject to the death penalty. It is a long time since anyone in any part of the United Kingdom has been hanged otherwise than on the verdict of a jury, and we could not contemplate a capital trial without a jury in Northern Ireland. We believe that the reintroduction of capital punishment would be more likely to increase than to reduce the level of violence. Accordingly, in the present circumstances we do not recommend a change for which there is so little demand in Northern Ireland.

Trial Procedures

24. The principal modifications of the normal procedures in relation to trial and punishment of criminal offences are made by Part I of the 1973 Act which was based mainly on the recommendations of the Diplock Commission. Trials held in accordance with the provisions of Part I commenced on 15th October 1973, and have therefore been subject to the test of experience for just over a year. But for the fact that there is no jury, the non-jury courts are ordinary courts, sitting in public with variations in the law of evidence and procedure which, on the whole, are not major ones.

Section 2

25. The principal departure from the normal criminal trial on indictment is the substitution of trial by a court without a jury for trial by judge and jury. This is provided for in section 2(1) of the 1973 Act which states: "A trial on indictment of a scheduled offence shall be conducted by the court without a jury". The court thus mentioned has always been constituted by a single judge, and we

believe that this accords with the true construction of the statute. A "scheduled offence" is defined in section 27 by reference to schedule 4 of the 1973 Act. This limits the expression to a list of offences which are mostly crimes of violence or related to crimes of violence. It does not cover all offences which are indictable, but it can, under section 27(3) be enlarged or reduced by the Secretary of State by Order in Council. We shall consider the contents of this schedule later; for the time being, however, we may regard it as comprising offences which by their nature and gravity present a proper and sufficient setting for the question to which we addressed ourselves; namely, should section 2(1) of the 1973 Act be continued in its substance during the conditions at present prevailing in Northern Ireland?

26. We believe that trial by jury is the best form of trial for serious cases, and that it should be restored in Northern Ireland as soon as this becomes possible. However, there are objections to its restoration at present.

27. The Diplock Commission, in their Report, referred to the intimidation of jurors and to the danger of perverse acquittals by partisan juries. We are convinced on the evidence that we have received, that if juries were to be reintroduced for scheduled offences, their verdicts would still be subject to the influences of intimidation, or the fear of it. We have no evidence of this or of perversity in juries (since in the absence of jury trials it obviously cannot be available), but we were given details of 482 instances between 1st January 1972 and 31st August 1974 in which civilian witnesses to murder and other terrorist offences were either too afraid to make any statement at all, or, having made a statement implicating an individual, were so afraid that they refused in any circumstances to give evidence in court. It is reasonable to assume that juries would be equally open to intimidation.

28. An incidental benefit of non-jury trials suggested in paragraph 38 of the Diplock Report, was that they might result in a substantial saving of time. Experience has shown that this is not just an incidental but a major benefit of the new system of trial, in courts working under great pressure. By dispensing with the swearing of a jury, speeches to the jury, and a summing up, an average of two hours is reckoned to be saved in a day. Its effect has been masked by the greatly increased success of the Royal Ulster Constabulary in bringing prosecutions against alleged terrorists, which has markedly added to the workload of the courts. As a result, the length of time between first remand and trial has increased from 25 weeks in October 1973 to 35.5 weeks in September 1974 for those in custody and to 39.1 weeks in the case of those on bail. We find this degree of delay unacceptable, and welcome the recent increase in the number of non-jury courts from three a day to five, with the promise of a sixth early in 1975. We hope the six courts will sit continuously until the backlog is removed, and that, where necessary, the courts' administration and the staff of the Director of Public Prosecutions, will be strengthened to cope with the additional workload. If further measures are necessary, such as the appointment of an additional High Court judge, we hope that they will be taken. Nevertheless, we are satisfied that, if jury trials were reintroduced for scheduled offences, delays would be even greater.

29. Although the abolition of jury trials raised much protest from those who saw in the jury a cherished safeguard and a fundamental civil right, there

has been wide agreement among those who gave evidence before us and who were best qualified to judge that the new system has worked fairly and well. Our general conclusion is that the right to a fair trial has been respected and maintained and that the administration of justice has not suffered. **We therefore recommend that subsection 2(1) should stand.**

30. The next question is whether a trial without a jury should be held, as it now is under section 2 of the 1973 Act, by a single judge. The Diplock Commission considered this, and concluded in paragraph 39 of their Report that they favoured a single judge court. We did, however, consider two suggestions which were put to us by various witnesses: namely, that the court should consist of a plurality of judges, or that it should consist of a judge and two lay assessors.

31. On the first of these suggestions we were given no convincing reasons why a plural court would be preferable. We agree with the Diplock Commission who said in paragraph 39 of their Report:

“Our oral adversarial system of procedures is ill-adapted to the collegiate conduct of a trial of fact. In criminal proceedings, in particular, immediate rulings on admissibility of evidence and other matters of procedure have constantly to be made by the single judge when sitting with a jury. It would gravely inconvenience the progress of the trial and diminish the value of oral examination and cross-examination as a means of eliciting the truth, if a plurality of judges had to consult together, albeit briefly, before each ruling was made.”

There is also a practical reason for adhering to the present system of a single judge. The provision of six courts, each consisting of three judges, would require 12 more judges; as this is more than half of the present strength of Queen's Counsel at the Northern Ireland Bar, from whose ranks judges are normally appointed, this would be an unacceptable weakening of the Bar at a time when its numerical strength is barely adequate to meet the many demands upon it. We conclude that any substantial increase in the number of judges for the purpose of constituting plural courts would be likely to produce further difficulties and delays and so defeat its purpose.

32. The other proposal for a court consisting of a single judge and two assessors recognises the difficulties mentioned above. However, it has its own problems, and those urging the appointment of assessors did not agree on either the source from which assessors should be drawn or what the respective functions of the judge and the assessors should be. It was suggested that Justices of the Peace should be empanelled for this purpose. But Northern Ireland Justices of the Peace have neither the jurisdiction nor the experience of their counterparts in England and Wales, and could not be made to accept a function for which they have not been appointed. Moreover, assessors, from whatever source obtained, would presumably be selected from a list on a rota system in much the same way as juries, and would be exposed to exactly the same pressures that made the jury system inappropriate. Our conclusion is that a trial with assessors is not a practicable proposition.

33. While recognising that the need to decide all the relevant issues of fact and law is an onerous task for a single judge and that a judge sitting alone may

on occasion make an error, we consider that the appeal without leave provided for by section 2(6) of the 1973 Act offers a reasonable safeguard in this connection. **We recommend that the courts under section 2 of the 1973 Act should continue to be constituted by a judge sitting alone.**

Section 3

34. Section 3 of the 1973 Act limits the power to grant bail in the case of scheduled offences. The section reads:

- “(1) Subject to the provisions of this section, a person to whom this section applies and who is charged with a scheduled offence shall not be admitted to bail except by a judge of the High Court acting in that capacity and, if he is convicted of such an offence, shall not be admitted to bail pending any appeal.
- (2) A judge shall not admit any such person to bail unless he is satisfied that the applicant—
- (a) will comply with the conditions on which he is admitted to bail; and
 - (b) will not interfere with any witnesses; and
 - (c) will not commit any offence while he is on bail.
- (3) Without prejudice to any other power to impose conditions on admission to bail, a judge may impose such conditions on admitting a person to bail under this section as appear to him likely to result in that person's appearance at the time and place required or to be necessary in the interests of justice or for the prevention of crime.
- (4) Nothing in this section shall prejudice any right of appeal against the refusal of a judge of the High Court to grant bail.
- (5) This section applies to persons who have attained the age of 14 and are not members of any of Her Majesty's regular naval, military or air forces.”

35. Section 3 has been useful in promoting a higher degree of uniformity in dealing with bail applications and in imposing a stricter scrutiny of such applications and of the criteria to be applied to them. But it has raised two difficulties. In the first place, operation of this section occupies much judicial time which could otherwise be spent in reducing the backlog of indictable cases for trial. From 8th August 1973 until 4th November 1974, 1,704 bail applications under section 3 were heard by the judges of the High Court. This led us to consider whether the time had arrived to remit this bail jurisdiction to the resident magistrates. We have examined this question closely and have come to the conclusion that such a change, if made at present, would be premature. We feel that section 3 has worked well and that something of what has been gained respecting the principles to be followed and the consistency of the decisions on bail would be lost if the bail jurisdiction was now to go back to resident magistrates. They sit in many different parts of the Province, have fewer opportunities for consultation than judges and are less likely to be consistent in their attitudes to bail. Moreover, it would not reduce the work of the High Court judges as much as might appear since it would be desirable, if bail applications were remitted to magistrates, to provide for an

appeal by the prosecution as well as by the accused to the High Court, and such appeals might make a considerable demand on the time of the judges of that Court. **We therefore recommend that bail applications related to scheduled offences should remain as provided by section 3.** But, in order to make it plain that a Lord Justice acting as a judge of the High Court has the same powers under the section as a High Court judge, **we recommend that the section should apply to a judge of the Supreme Court as that term includes the judges of the High Court and also the Lords Justices.** We considered whether the power to grant bail under the section should be given to County Court judges, but we decided that such an extension of the 1973 Act would be likely to reduce the consistency of decisions and was therefore, on balance, undesirable. However, having regard to the provisions of section 3(1) and section 4(3), a County Court judge adjourning the trial of a scheduled offence has no power to grant bail. **We recommend that he should have this power, as it may be that the circumstances arising in relation to an adjournment would make the granting of bail a proper course.**

36. The second difficulty is caused by the latter part of section 3(1) which provides that a person convicted of a scheduled offence is not to be admitted to bail pending an appeal. The result of this very wide provision is that a person convicted of, and imprisoned for, a scheduled offence at a magistrates' court has, if he appeals, to await in gaol the next County Court sitting and may have served his sentence, or most of it, before his appeal can be heard; and further, if the trial has been on indictment, the Court of Criminal Appeal cannot grant a convicted person bail pending his appeal to it, no matter what the merits may be. These consequences may work an injustice; **we therefore recommend that this restriction on the grant of bail pending an appeal should be removed.**

37. We have considered whether section 3(5) should be extended so as to exclude from the operation of the section members of the Royal Ulster Constabulary as well as serving members of Her Majesty's regular naval, military or air forces, who are excluded under section 3(5) as it stands. It was argued that the police should have the same privilege as that accorded to Her Majesty's regular forces; and further, that a member of the Royal Ulster Constabulary who was remanded in custody, under section 3, to the Maze prison would be in grave risk of injury from the prisoners already held there. If there had been any intentional or unreasonable discrimination between the Royal Ulster Constabulary and the regular forces in this matter, much could be said for amending section 3(5) so as to treat the police and the regular forces on an equal footing. But we are satisfied that the real reason behind section 3(5)'s apparent discrimination lies in the fact that the regular forces can usually arrange to have one of their number held in military custody during remand, whereas the police cannot usually so arrange. So far as the risk of injury while on remand at the Maze Prison goes, we agree that such a risk would be a real one, but we were informed, and accept, that, in the case of a policeman being returned for trial in custody, there would be no administrative difficulty in providing custody in safe conditions. We therefore consider that section 3(5) does not place, and was not intended to place, members of the Royal Ulster Constabulary at any real disadvantage and accordingly recommend no change.

38. To give effect to the above recommendations we suggest that the 1973 Act be amended as follows:

- (a) The words " High Court " in section 3(1) should be deleted and the words " Supreme Court " should be inserted.
- (b) All the words of section 3(1) after the word " Court " should be deleted.
- (c) A new subsection should be added after section 3(1) to the following effect—
 " (1A) A County Court judge on adjourning the trial of a person charged with a scheduled offence shall have the same powers of granting bail as a judge of the Supreme Court."
- (d) Sections 3(2), 3(3), 3(4) and 3(5) should stand.
- (e) In section 4(3) the word " including " should be substituted for the word " except ".

39. There are two further matters on which we feel action should be taken. In the first place, instances arise where a short release on bail is sought on compassionate grounds (e.g. the grave illness or funeral of a near relative). We recommend that any such application should be made to a judge of the Supreme Court, or to the Court of Criminal Appeal if the applicant has an appeal pending in that court, and that the judge or court (as the case may be) should have jurisdiction to grant such bail at discretion, but subject to the provisions of sections 3(2) and 3(3).

40. Secondly, a consequence of the provisions of section 3 has been that the resident magistrates have been excluded from granting Legal Aid Certificates for applications for bail in the cases of scheduled offences. This has thrown much extra work on the Legal Aid Department of the Incorporated Law Society of Northern Ireland, which deals as best it can with those requesting legal aid for their bail applications, generally by way of Emergency Certificates under the Legal Aid (General) Regulations (Northern Ireland) 1965, (S.R. & O (N.I.) 1965 No. 217) as if it was a civil proceeding. This is a cumbersome and unsuitable procedure particularly because of the need for as speedy a determination as practicable of pending applications for bail under section 3. We have considered the possibility of meeting this situation by conferring new powers on the resident magistrates but have come to the conclusion that the procedure should be kept as simple and direct as it can be. To that end, we accordingly recommend that the judge hearing the application for bail should be empowered to consider an application for free legal aid and to grant such in the exercise of his discretion. A similar power is vested in the Court of Criminal Appeal under section 23 of the Criminal Appeal (Northern Ireland) Act 1968 and is, we understand, proving satisfactory in practice.

Section 5

41. Section 5 of the 1973 Act relates only to criminal proceedings for scheduled offences. It provides that a written statement, made and signed by a person in the presence of a constable, shall be admissible as evidence of any fact stated therein of which the person's direct oral evidence would be admissible if it is shown that the person who made the statement:

- (a) is dead or bodily or mentally unfit to attend as a witness; or

- (b) is outside Northern Ireland and it is not reasonably practicable to secure his attendance; or
- (c) cannot be found after all reasonable steps have been taken to find him.

42. The unsworn statements to which section 5 relates would otherwise be inadmissible as hearsay. The main object of the section was to meet the problem that witnesses to terrorist crimes might be killed or so injured as to be incapable of coming to court, or might flee from Northern Ireland or go into hiding in fear for their own safety, thus making it impracticable to produce them to give oral evidence in court. It was also suggested that the section might lessen the hazards for those who had made statements, as their being killed, injured or intimidated thereafter would not prevent the use of their evidence as recorded in their statements.

43. But the objections to section 5 are twofold. First, the accused has no opportunity to test the statement by cross-examination. Second, the accuracy and quality of the statement might, depending on the circumstances in which it was taken and the character and intelligence of those concerned in making it, be open to grave doubt. It is obvious that these drawbacks were regarded by the Director of Public Prosecutions as making this type of evidence generally unsatisfactory; he issued a direction on 7th August 1973, to the Chief Constable that statements under section 5 were not to be tendered to any court without his authority, and this practice also applies to his staff and those acting on his behalf. In fact, evidence tendered under section 5 has never been used in a trial.

44. Section 5 does not refer specifically to intimidation and it is doubtful how far it can be used to make the statement of an intimidated person admissible or how much protection, if any, it is likely to give such a person. It contributes nothing sufficient to override the objections to its use, which we have already noted. We think evidence admitted under section 5 is so likely to lack evidential value that **we recommend that it should be repealed or allowed to lapse.**

45. We considered whether section 5, particularly paragraph (b), might be used, possibly with some amplification, to allow the written statements of soldiers to be put in evidence at the trial when they have been posted overseas. The recalling of soldiers from outside Northern Ireland involves a serious cost to the public and is a great inconvenience for the Army; where the evidence is formal in nature or admitted, we have sympathy with the desire to reduce this inconvenience, if the interests of justice will not be prejudiced. But the terms of section 5 would be inappropriate for this purpose. The procedure under section 44 of the Magistrates' Courts Act (Northern Ireland) 1964, whereby witnesses may be bound over to attend the trial conditionally, is seldom used. Use of this procedure, in suitable cases where the evidence in question is formal or admitted, might save considerable expense. Sections 1 and 2 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 might also be invoked in appropriate instances to the same end. Section 1 of this Act enables written statements to be admissible in evidence, subject to certain conditions, in criminal proceedings other than a preliminary investigation of an indictable offence; section 2 provides for the proof of a fact by formal admission made before or at any criminal proceedings. These enactments will

not suit every case, and their value depends to a considerable extent on the degree of co-operation offered by the accused; however, we doubt if it is practicable to go further.

Section 6

46. Section 6 of the 1973 Act relates to the admission of statements made by the accused and is of special importance because it may be assumed that most of such statements are likely to be in the form of confessions. On reading the section, the question at once arises as to how far it impinges on the position at common law. The words of section 6(2) which refer to an accused person having been "... subjected to torture or to inhuman or degrading treatment..." are taken from Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. Where the accused has *prima facie* been subjected to ill-treatment of this kind in order to induce him to make the statement, it will be excluded unless the court is satisfied that the statement has not been so obtained. That degree of protection the section undoubtedly gives.

47. But the protection of the common law goes further by excluding statements induced by threats, promises or some form of oppressive conduct. This last element, "oppressive conduct", is necessarily difficult to define in this context, but we think it safe to say that a finding upon it calls for a review of all the relevant circumstances, including the nature of the investigation, the public interest and the position of the accused. Moreover, the common law goes an important step beyond this. Perhaps in recognition of the infinite variety of the circumstances in criminal cases, it has conferred on judges a judicial discretion to exclude certain forms of evidence even when legally admissible. This has been proclaimed on various occasions and was described by Lord Parker of Waddington thus in *Callis v. Gunn* [1964] 1 Q.B. 495 at 501:

"... as is well known, in every criminal case a judge has a discretion to disallow evidence, even if in law relevant and therefore admissible, if admissibility would operate unfairly against a defendant. I would add that in considering whether admissibility would operate unfairly against a defendant one would certainly consider whether it had been obtained in an oppressive manner by force or against the wishes of an accused person. That is the general principle".*

This discretion may be regarded as promoting what is now the accepted view, namely, that the interests of justice demand a fair trial no less than a proper verdict. A "fair trial" here connotes not what may be pleasing to either side, but what will be fair and just as between the accused on the one hand and the public interest on the other.

48. Section 6 is based on a recommendation by the Diplock Commission, and is dealt with in paragraphs 73-92 of their Report. Reading these paragraphs first and section 6 subsequently, one might easily jump to the conclusion that section 6 removed the judicial discretion referred to above and left as the sole basis for exclusion the broader grounds comprised in the quotation from Article 3 of the European Convention. See, for example, paragraph 89 with reference to

*See also *Noor Mohamed v. R.* [1949] A.C. 182 at 192; *Harris v. D.P.P.* [1952] A.C. 694 at 707; *Kuruma v. R.* [1955] A.C. 197 at 204; and *R. v. Murphy* [1965] N.I. 138 at 142-3.

the suspension of judicial discretions, and paragraph 90 which would admit statements "preceded by promises of favours or indications of the consequences which might follow if the persons questioned persisted in refusing to answer". In our opinion, however, this would be a mistaken view. It is difficult to conclude that Parliament intended to withdraw from the judiciary a well-established discretion of the important nature indicated without saying so in clear terms. Judges presiding over the trials of scheduled offences in Northern Ireland during the last year have held that this discretion remains vested in them and have exercised it when the interests of justice so required.

49. In the belief that this is the correct view, we do not suggest that section 6 should be repealed. Any attempt to recast section 6 so as to take away the judicial discretion and adhere more closely to the views of the Diplock Commission would be regrettable. It would make the law as to the admissibility of confessions substantially and fundamentally different according to whether the evidence related to a scheduled or non-scheduled offence. The distinction between these categories affords no proper or sufficient ground for this.

50. We have been told that section 6 has proved procedurally convenient and satisfactory; we have heard nothing to indicate that it has caused any miscarriage of justice; and, so long as the judicial discretion remains, we think the chances of section 6 producing an unjust trial or an unjust verdict are remote. But the construction we favour, which leaves the judicial discretion unimpaired, should be stated expressly and no longer left to be inferred. We therefore recommend that an additional subsection should be added to section 6 on the following lines:

"(3) It is hereby declared that nothing in this section shall prevent the court, in the exercise of its discretion, from excluding or disregarding a statement to which this section relates, or any part thereof, if in the view of the court the interests of justice so require."

Section 7

51. Section 7 of the 1973 Act comes into operation where a person is charged with possessing a proscribed article in circumstances such as to constitute an offence under certain provisions contained in the Explosive Substances Act 1883, the Firearms Act (Northern Ireland) 1969, and the Protection of the Person and Property Act (Northern Ireland) 1969. "Proscribed article" means an explosive, firearm, ammunition, substance or other thing (including a petrol bomb). The section provides that if it is proved that: (a) the accused and the article were both present in any premises, or (b) the article was in premises of which the accused was the occupier, or which he habitually used otherwise than as a member of the public, then the court **may** accept such proof as sufficient evidence of the accused possessing or, if relevant, knowingly possessing, that article, unless it is further proved that he did not at the time know of its presence in the premises in question, or if he did know, that he had no control over it. The section is far-reaching as, by virtue of section 7(2), it applies "to vessels, aircraft and vehicles as it applies to premises."

52. We noted that the section does not pass the onus of proof to the accused absolutely in all cases. The court has a discretion; it may accept the evidence

as sufficient to shift the onus, or it may not. Moreover, at the end of the case the onus rests, as always, on the prosecution to prove beyond doubt the guilt of the accused. There are many statutory precedents for a provision of this nature. There are at least 29 other United Kingdom Acts and four Northern Ireland Acts transferring the onus of proof to the accused. One of the sections to which section 7 applies furnished an example. Section 4 of the Explosive Substances Act 1883 makes it an offence for a person to make, or knowingly have in his possession or under his control, any explosive substance under such circumstances as to give rise to a reasonable suspicion that he is not making it, or does not have it in his possession or under his control, for a lawful object, unless he can show that he made it or had it in his possession or under his control for a lawful object.

53. Usually this form of statutory transfer of the onus applies where the accused is in a special position to give evidence on the issue, and this will generally be the case in respect of charges of possession under section 7. The accused's presence in or his occupation or use of the premises in which, at the time of the offence, the article was found, makes it not unreasonable to look to him for a denial of knowledge or for other exculpatory evidence. It is contrary to common sense that, for example, when weapons are found in a car in which two or three people are travelling, none of those in the car need provide an explanation of the presence of the weapons and as a consequence nobody can be convicted of their possession. In the present situation in Northern Ireland such charges arise continually. **We therefore recommend that section 7 should continue in force.**

Further Procedural Matters

54. A number of additional changes in the method of trial of scheduled offences have been suggested to us; it was said that these would have the effect of reducing the frequency with which witnesses refuse to testify for fear of intimidation, and thus making it easier to bring terrorists before the courts, rather than having to resort to detention without trial. The proposals take a number of forms: some witnesses have suggested the setting up of "special" or "emergency" courts staffed either by the Northern Ireland judiciary or by judges brought from other parts of the United Kingdom; and others have proposed the introduction into the non-jury courts of a number of radical changes in procedure. Common to all these proposals is the idea of withholding the identity of witnesses by means of such methods as the use of screens and voice scramblers and, if necessary, the exclusion of the defendant and his counsel during part of the hearing. It was further suggested that hearsay evidence should be admitted, where it would be too dangerous for the witnesses to appear in person, even with these techniques to conceal their identity.

55. We weighed the likely effectiveness of such changes against the danger that their use would erode respect for the whole court system. There is no doubt that these changes would encourage at least some witnesses to appear who might otherwise not do so, although it is easy to exaggerate the likely effect of these changes. But the very serious limitations which they would place on effective cross-examination, thus imperilling the whole concept of a fair trial,

seem to us, as they did to the Diplock Commission, a conclusive argument against their introduction. We are reinforced in this view by the very strong criticism which we have heard of the use of similar procedures in the Commissioners' hearings at the Maze in relation to detention. We therefore reject their introduction into the normal courts, or the setting up of any separate courts, whether served by Northern Ireland or other judges, which would make use of such procedures.

56. It was also suggested to us that the accused should be obliged to testify in his own defence once a *prima facie* case has been made out against him. We have more sympathy with this suggestion, but it would only be of assistance to the court once a *prima facie* case had been established, and would not materially assist in the main problem of establishing such a case when witnesses are being intimidated. The right to remain silent is a much cherished right for the accused in our courts, and its removal might well lead many people to believe that the quality of justice had been lowered. Since we doubt the effectiveness of a change of this kind, there is no sufficient case for risking an adverse effect on the esteem in which the courts are held.

57. Two further matters arise in relation to proceedings before a magistrates' court:

- (a) When a scheduled offence is directed to be prosecuted summarily, the practice has been followed in magistrates' courts that summonses should contain charges in respect of scheduled offences, or in respect of non-scheduled offences, but not a mixture of the two. In theory this is a proper procedure lest on the summary trial of a scheduled offence any point should arise under section 6 or section 7. In practice such points have not arisen in summary proceedings because, when the Director of Public Prosecutions has been aware that such a point is likely to arise, the prosecution has been directed by way of indictment. For the avoidance of doubt, however, **we recommend that it should be made clear by legislation that scheduled offences tried summarily should not be subject to the procedures of Part I of the 1973 Act.**
- (b) It is often convenient, and also saves time in the case of scheduled offences, to have a preliminary enquiry as provided for by the Criminal Procedure (Committal for Trial) Act (Northern Ireland) 1968; but, by section 1 thereof, this procedure is only possible "if the prosecutor so requests and the accused does not object to such preliminary enquiry". If, however, as often happens in the case of a scheduled offence, the accused does not recognise the court, it may be difficult to say whether he has objected to the prosecutor's request. He may, for instance, just say nothing. It would aid this procedure if the wording of section 1 were amended to provide that: where the offence charged is a scheduled offence and the prosecutor has requested a preliminary enquiry, the court shall explain to the accused the difference between a preliminary enquiry and a preliminary investigation, and shall ask him if he objects to a preliminary enquiry; if the accused does not answer the question, he should be assumed not to object. **We recommend an amendment on these lines.**

Scheduled Offences

58. Having considered the principal changes made by Part I of the 1973 Act in relation to scheduled offences, we now return to that category to ask if it should remain as it is, a catalogue of offences concerned for the most part with acts of violence as set out in schedule 4. The first question to be examined is whether the whole idea of two categories of indictable offence, the scheduled offences and the rest, should remain. It would be much simpler in various ways if Part I applied to all indictable offences. But this would mean that the special procedures of Part I would, as it were, apply across the board. On the views already expressed the result of this would be that all indictable cases would be tried before a judge alone and would be subject to sections 6 and 7. This would involve persons accused of what are now non-scheduled offences being deprived of their present right to trial by jury. As we stated in paragraph 26, trial by jury is the best form of trial for serious criminal cases and it should be restored for all indictable offences as soon as possible. We believe that it should be retained even in present circumstances to the maximum extent possible. We therefore recommend no change in the present position.

Proposed Changes

59. We then considered whether any changes should be made in the offences included in schedule 4. We noted that the Government already proposes, following its acceptance of the Report of the Law Enforcement Commission (Cmnd 5627), to include kidnapping and false imprisonment in the list of offences committed in the Republic of Ireland which can be tried in Northern Ireland, with the consequence that they will become scheduled offences tried by non-jury courts. At present the offence of escaping from prison, when committed by a person convicted of or charged with a scheduled offence, is triable by a judge and jury, because the offence of escaping from lawful custody and related offences under the Prison Act (Northern Ireland) 1953 are not listed in the schedule. By contrast the offence of escaping from prison, when committed by a person being detained under an interim custody order or a detention order, is triable by a judge sitting without a jury, because that offence, created by paragraph 38 of schedule 1 to the 1973 Act, is a scheduled offence. Thus, if a prisoner convicted of a scheduled offence and a detainee together escape from the Maze Prison, and are caught and charged, the convicted prisoner will be entitled to trial by jury and the detainee will not. **We recommend that this inconsistency should be removed by inserting in the list of scheduled offences the offence of escape and the related offences such as assisting escapes and rescuing persons under sections 25 to 33 of the Prison Act (Northern Ireland) 1953, when the prisoner involved has been convicted of or charged with a scheduled offence.**

60. We also considered whether any offences should be removed from schedule 4. In general we consider that the content of the schedule has proved to be appropriate in present circumstances, and we have only one recommendation to make. Section 22 of the 1973 Act provides a maximum penalty of 18 months imprisonment for the offences of riotous behaviour, or behaviour likely to cause a breach of the peace in a public place, and, by virtue of section 41 of the Magistrates' Courts Act (Northern Ireland) 1964, a defendant may have a right to claim trial on indictment. The offence of riotous behaviour etc., under section 9 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 should be dealt with quickly and this is more effectively done by a

magistrate than by trial on indictment. **We therefore recommend that section 22 of the 1973 Act be repealed with the effect that the maximum penalty of six months is restored for these offences and any possible right to trial on indictment is removed.** The offence should, as a consequence of our recommendation in paragraph 57 above, be removed from schedule 4, and note 3 to the schedule deleted.

Procedural Points Related to Scheduled Offences

61. The conclusion that scheduled offences should remain raises several procedural points relating to those offences:

- (a) section 2(3) says that where an indictment contains a count alleging a scheduled offence and another alleging a non-scheduled offence, the latter is to be disregarded. This can cause inconvenience and delay and **we recommend that the subsection should be amended so as to enable a non-scheduled offence, which is associated with the scheduled offence, to be tried with it, if the accused does not object.**
- (b) section 4, which relates to the trial of scheduled offences in Belfast, seems to be working well apart from some difficulties in the operation of section 4(2) which provides for committals to the Belfast City Commission or Belfast Recorder's Court. **The reference to the Belfast Recorder's Court is unnecessary and it would be easier to arrange the business of the Belfast City Commission if the words "or the Belfast Recorder's Court" were deleted. We so recommend.**
- (c) section 4, in conjunction with the restriction on bail, the need in many cases for adjournments of the preliminary investigation and the location of the available remand prisons in different counties (usually Armagh for women and Belfast for men), makes procedure for committal and adjournment for remand highly inconvenient. **We therefore recommend that section 43(2) of the Magistrates' Courts Act (Northern Ireland) 1964 be amended by the addition of the words:**
" or
(c) in the case of an indictable scheduled offence a magistrates' court having jurisdiction to conduct a preliminary investigation or a preliminary enquiry into such an offence ".

The reasons for this recommendation are somewhat technical and detailed and are contained in Appendix C.

- (d) practical difficulties may also arise where the accused is disorderly in court. For the reasons detailed in Appendix D, **we recommend that paragraph (a) of section 45 of the Criminal Justice Act 1972 be applied to preliminary investigations or enquiries before magistrates' courts in Northern Ireland.**

62. We considered whether charges against the police in the performance of their duty should rank as scheduled offences. It was suggested to us that scheduled offences were commonly regarded as terrorist offences and that it was unfair and derogatory that policemen should be associated with terrorism in the popular mind by being charged with a scheduled offence allegedly committed on an occasion when they were acting in the performance of their duty. Contrary to this popular impression, a scheduled offence does not

necessarily connote an act of terrorism and we have no doubt that policemen can legally be prosecuted in non-jury courts in respect of acts done in the execution of duty which fall within schedule 4. But there is no doubt that the 1973 Act was commonly regarded, and referred to, as having set up a special procedure for terrorist offences; there was an occasion recently when the Royal Ulster Constabulary felt strongly about a policeman being prosecuted for a scheduled offence while in the performance of his duty and genuinely considered such a prosecution a reflection on the force and its traditions. We do not consider it appropriate to amend the 1973 Act specifically to exclude members of the security forces from its provisions, but the notes 1 and 2 to schedule 4 already provide the necessary power to enable the Attorney General to certify out the offences which a member of the security forces is likely to be accused of committing while in the performance of his duty. This power has in practice been circumscribed, because it has been interpreted in the light of the statement made to the House of Commons on 17th April 1973, during the second reading of the Northern Ireland (Emergency Provisions) Bill, by the then Secretary of State for Northern Ireland:

“ . . . for some of the offences it is provided that a certificate may be given to the effect that a particular case should not be treated as a scheduled offence. This is to enable crimes regarded as not connected with the emergency to be singled out and dealt with in the ordinary way.” (Official Report, 17th April 1973, column 280.)

There are no compelling reasons for the Attorney General's power of certification to be fettered in this manner. **We therefore recommend that it should be left solely to his discretion to certify offences, whether applying to the security forces or not, as being non-scheduled when he considers this to be in the best interests of justice.**

63. Another matter, relating to the trial of members of Her Majesty's forces for scheduled offences, should be mentioned at this point. We have considered whether section 70 of the Army Act 1955 should be amended so that cases of murder or manslaughter alleged to have been committed by a soldier in the course of his duty in Northern Ireland could be dealt with by courts martial. It has been suggested to us that, having regard to the prevailing situation in Northern Ireland, it would be in the public interest that this amendment should be made, as it would be helpful in sustaining army morale and would ensure that military considerations relevant to the trial of such cases would be better appreciated. We have considered this question carefully. It seems to us that section 70 of the Army Act recognises that a soldier is a citizen of the United Kingdom and should, when serving in the United Kingdom, be treated in the same way as other citizens, so far as is consistent with the maintenance of military discipline. We recognise that soldiers are serving in difficult and unusual conditions in Northern Ireland; however, we believe that it would be inconsistent with their role in support of the civil power for them to be subject to a military trial when they are charged with serious offences such as murder or manslaughter.

Criminal Investigation

64. There is one final point that must be emphasized. As mentioned earlier in this Report, the success of the security forces in bringing an increasing

number of terrorists to trial is one of the few encouraging features of an otherwise depressing record of events this year in Northern Ireland. But the maintenance of this success depends crucially on the Criminal Investigation Department of the Royal Ulster Constabulary. It represents a smaller proportion of the total force than does the Criminal Investigation Department of a normal English county police force, despite the fact that it has to combat a very high level of terrorism. To bring more terrorists before the courts—and it will be noted that we have not recommended major changes in court procedures or any diminution in the standard of proof—the Criminal Investigation Department will have to be strengthened. This will cost money, but it will be money well spent.

CHAPTER 3

EXISTING AND PROPOSED OFFENCES

Proscription

65. Section 19 of the 1973 Act empowers the Secretary of State to proscribe any organisation; the effect of proscription is that any member of that organisation, or anyone who, financially or otherwise, supports that organisation, commits an offence, punishable on summary conviction by imprisonment for not more than six months or a fine not exceeding £400 or both, and on conviction on indictment, by imprisonment for a term not exceeding five years or to a fine or both. Under section 23 of the 1973 Act, anyone who dresses or behaves in a public place in a way to suggest that he is a member of such an organisation is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both. At present the organisations proscribed are both the Official and Provisional IRA, Cumann na mBan (the Women's Branch of the IRA), and Fianna na hEireann (the Youth Branch of the IRA), Saor Eire (an IRA splinter group) and the Ulster Freedom Fighters and the Red Hand Commando (two "loyalist" terrorist groups). Sinn Fein, the political affiliate of the IRA, and the Ulster Volunteer Force were deproscribed in May 1974.

66. An important incidental effect of proscription is that, in connection with the Criminal Injuries to Persons (Compensation) Act (Northern Ireland) 1968 and in the Criminal Injuries to Property (Compensation) Act (Northern Ireland) 1971, proscription under section 19 provides the basis upon which the Chief Constable can certify in appropriate cases that an "unlawful organisation" has been responsible for an act, thus considerably simplifying the claims procedure.

67. There have been 22 successful prosecutions out of 28 in which membership under section 19 has been the sole allegation since the 1973 Act came into force. That there have been so few prosecutions is partly because of the difficulties involved in proving membership in circumstances where, through intimidation, witnesses will not readily come forward to testify and partly because in many cases more serious charges are preferred. Nevertheless, the existence of section 19 deters those who might otherwise be prepared to provide financial or other support to proscribed organisations.

68. We have considered whether there should be introduced into the courts of Northern Ireland arrangements similar to those in force in the Republic of Ireland under the Offences Against the State (Amendment) Act 1972 whereby a court can accept a statement by a senior police officer to the effect that, to the best of his belief, a person is a member of an illegal organisation as *prima facie* evidence of that fact. We do not favour this course for the reasons discussed in paragraph 22 of the Diplock Report.

69. Since the IRA is proscribed both in Great Britain and the Republic of Ireland, it is appropriate and indeed necessary that the IRA should remain proscribed in Northern Ireland. But proscription is distinctly uneven in its application in Northern Ireland. There are terrorist organisations which are not

proscribed, but whose members perpetrate intimidation, violence and sectarian murder. Where there is evidence that such an organisation encourages or condones such crimes by its members, the Government should make use of its powers under section 19. **We therefore recommend its retention.**

Offence of Terrorism

70. We considered the creation of a new offence of being concerned in terrorism in the following terms:

“Any person who is concerned in the commission or attempted commission of any act of terrorism or in directing, organising, training or recruiting persons for the purpose of terrorism shall be liable on conviction on indictment to imprisonment for a term not exceeding 15 years.”

Many of the most dangerous terrorists do not themselves commit specific offences, but they are responsible for directing, organising, training or recruiting others to commit acts of terrorism. Such persons could be indicted, if the evidence were available, for conspiracy at common law; this crime is difficult to prove and often involves intricate questions of law. **We therefore recommend the creation of this simpler statutory offence, which should be included in schedule 4 to the 1973 Act.** We hope that its introduction would result in prosecutions for this offence of some people who now can only be dealt with by the detention procedure. Many young people, including children, have been recruited to commit acts of terrorism by various terrorist groups. This is an evil and dangerous practice. The proposed crime of terrorism is extended to include recruitment. **The definition of terrorist under section 28(1) of the 1973 Act does not include recruitment and we recommend that it should be amended to do so.**

71. We also considered the amendment of the definition of terrorism in section 28(1) of the 1973 Act in the following terms:

“Terrorism means the use of violence for political or sectarian ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.”

This extension of the definition of terrorism is necessary because, although most acts of terrorism are politically motivated, many are not; and, of the latter, the majority are undoubtedly acts of terrorism with apparent sectarian motivation. Therefore, to eliminate the possibility of a successful but unmeritorious, technical defence that the alleged act of terrorism had a sectarian but not a political motivation, **we recommend this extension to the definition in section 28(1) of the 1973 Act.**

Offence of Disguise

72. We also considered the creation of a new offence of disguise:

“Any person who in a public or open place or in the vicinity of a dwelling house (whether or not he enters or seeks to enter such dwelling) wears any form of disguise shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400 or both provided always that it shall be a defence that there was just cause or reasonable excuse for such behaviour.”

Section 23 of the 1973 Act is limited in its application because it only applies where a person charged dresses etc. so as to arouse reasonable apprehension that he is a member of a proscribed organisation. There is a somewhat similar offence created by section 2 of the Prevention of Terrorism (Temporary Provisions) Act 1974 which also applies only to members of proscribed organisations and which does not apply to Northern Ireland. The wearing of disguises for the purpose of terrorism and intimidation of innocent citizens is widespread. Many of the persons wearing these disguises are not members of any proscribed organisation. **We therefore recommend the creation of this new summary offence.**

The News Media

73. The view has been expressed to us that the news media must bear a degree of responsibility for the encouragement of terrorist activity in Northern Ireland. Interviews with terrorist leaders on television and radio and the practice of some newspapers in accepting advertisements from paramilitary groups may provide propaganda platforms for those whose aim is the violent overthrow of lawful government. There is a tendency, which exists elsewhere, towards sensational reporting of shootings and bombing incidents which lends a spurious glamour both to the activities themselves and to the perpetrators. In addition there are ill-founded and false allegations against the security forces.

74. There can be no question of introducing censorship in a free society in time of peace. But this does not mean that nothing can be done. **We recommend that it be made a summary offence for editors, printers and publishers of newspapers to publish anything which purports to be an advertisement for or on behalf of an illegal organisation or part of it.**

75. The authority of the Press Council extends to all newspapers and magazines within the United Kingdom, including Northern Ireland. Although it possesses only the powers to censure a publication, newspapers are, in fact, highly sensitive to such action by their peers. It also has the authority to consider general policies about publication with the public interest in mind; it has, for instance, issued a general caveat against newspapers printing and paying for the memoirs of criminals. In the present situation, we suggest that the Press Council should closely examine the reconciliation of the reporting of terrorist activities with the public interest.

76. Finally, the Governors of the British Broadcasting Corporation and the Independent Broadcasting Authority should re-examine the guidance they give to programme controllers or companies about contact with terrorist organisations and the reporting of their views and activities.

CHAPTER 4

POWERS OF THE SECURITY FORCES

Existing Powers

77. The powers to stop and question, arrest and detain, search and seize, are contained in Part II of the 1973 Act.

Power to Stop and Question

78. Under section 16 of the 1973 Act, any member of Her Majesty's forces (hereafter "the armed forces") on duty, or any constable may stop and question a person to establish his identity and movements and what he knows about any recent explosion or other incident endangering life, or concerning any person killed or injured in such incidents. Anyone who fails to stop and answer these questions to the best of his knowledge and ability commits an offence under the 1973 Act.

Powers of Arrest

79. A constable, acting under sections 10 and 11 of the 1973 Act, may arrest without warrant anyone he suspects of being a terrorist or anyone he suspects of committing, having committed, or being about to commit a scheduled offence or any other offence under the 1973 Act. Persons arrested under section 10 may be held for not more than 72 hours. Under section 12 of the 1973 Act, a member of the armed forces on duty may arrest without warrant any person whom he suspects of committing, having committed or being about to commit any offence. He complies with the law in making this arrest if he states that he is doing so as a member of the armed forces, and any person so arrested may be held for not more than 4 hours.

Powers of Search and Seizure

80. For the purpose of effecting an arrest under sections 10 and 11, a constable may enter and search any premises or any other place where the person is suspected of being. Under section 11 alone, a constable is entitled to seize anything which he suspects of being or having been or being intended to be used in the commission of a scheduled offence or any other offence under the 1973 Act. Under section 12 of the 1973 Act, a member of the armed forces may enter, and search, any premises or other place where a wanted person is known to be; or where that person is thought to be if he is suspected of being a terrorist or of having committed an offence involving the use or possession of an explosive or firearm.

81. Under sections 13 and 15 of the 1973 Act, a constable, with the authorisation of a police officer not below the rank of Chief Inspector, and a member of the armed forces on duty, with the authorisation of a commissioned officer, may enter any dwellinghouse in order to search for unlawful munitions or when it is believed that a person is unlawfully detained in such circumstances that his life is in danger. For such purpose and in such circumstances he may enter any other premises or place without authorisation. He may stop and search anybody in a public place for munitions, and also may search anybody

suspected of unlawfully carrying munitions who is not in a public place. Any munitions found may be seized and, if necessary, destroyed, unless it seems to the searcher that the munitions were held lawfully and were not intended for unlawful use.

82. Section 17 of the 1973 Act authorises a constable or a member of the armed forces on duty to enter any premises or other place if necessary to do so for the preservation of peace and if specifically authorised by, or on behalf of, the Secretary of State, to enter any premises or other place, take possession of land or other property, detain, destroy or move property or place buildings in a state of defence. Moreover, any member of the armed forces on duty or any constable specifically authorised to do so by, or on behalf of, the Secretary of State may wholly or partly close a highway or divert or otherwise interfere with rights of way. Section 18 extends the power to stop, enter and search to cover vessels, aircraft and vehicles. It also confers the right to use force, if need be, in the exercise of any of these powers of entry.

Use of Existing Powers

83. Witnesses who appeared before us left us in no doubt that sections of the minority community, and some parts of the majority community, consider that the use made by the Army of these powers is excessive and constitutes a real and continuing source of grievance and friction. In particular they complained about the use of the powers of questioning under section 16 and of arrest under section 12. It was not generally suggested that the Army was acting illegally, but it was alleged that the powers were being used to harass certain individuals and groups. We also received a number of specific complaints on which we asked the Army to comment, not because it was any part of our task to adjudicate on individual complaints, but because we thought it necessary to be aware of both sides of the case. It is our judgment that, although there may be occasions when there is unnecessary harassment or misbehaviour, the Army and the police have acted with considerable restraint in very difficult circumstances.

84. The Army operates principally in those areas where the minority community predominate and it is easy to see that the use of the Army to carry out police duties has built up a strong feeling of resentment in that community. But the minority community holds it in its power to redress the situation by steadily enlarging the areas in which the Royal Ulster Constabulary can operate and by contributing to its strength. Until the police are so accepted and reinforced by the minority community the Army will have to continue to carry out policing duties very much as at present.

Proposed Changes

85. We received a number of suggestions that the powers of the security forces should be curtailed. In particular proposals were made that reasons should be given at the time of arrest, and that reasonable suspicion should be a necessary pre-requisite. We have considered these points carefully; they were previously considered in chapter 6 of the Diplock Commission's Report. We agree that to impose these conditions on soldiers in the present conditions in Northern Ireland would be impracticable. Nor, in the light of the evidence we have about the use of these powers, do we consider these changes

necessary. We therefore recommend that the existing powers of arrest and search in Part II of the 1973 Act should be retained subject only to the points which we mention below.

Section 10

86. A number of witnesses suggested to us that when children under fourteen are arrested under section 10 of the 1973 Act their parents should be informed as soon as practicable and should be allowed to be present during questioning. This is the present policy of the police; every reasonable effort must be made to keep the period during which children are held without their parents' knowledge as brief as possible.

87. A further point made to us was that a person arrested under section 10 should be entitled to have his solicitor present during questioning and be able to consult him out of the hearing of police officers. Under current Royal Ulster Constabulary instructions, a police officer in charge of a police station may allow a visit by a solicitor to a person held unless the visit is likely to hinder or cause unreasonable delay to police investigations. When such a visit is permitted, the solicitor and client can talk out of earshot of the police. We understand that it is proposed shortly to introduce into Northern Ireland the 1964 Judges' Rules, which apply in England and Wales. In the introduction to these Rules it is stated that they do not affect the principle that every person at any stage of an investigation should be able to communicate and consult privately with a solicitor; this is so even if he is in custody, provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or to the administration of justice by his doing so. In these circumstances we do not consider it necessary to make any specific recommendation on this matter.

Section 13

88. The powers of search under section 13 of the 1973 Act are defective in an important respect. The terrorist and subversive organisations are making constant use of communications equipment to broadcast, to monitor, and to interfere with the communications of the security forces. It is not always possible to be certain in which premises such equipment is located, and, even when it is found incidentally in the course of a search for munitions, there are inadequate powers to seize it in all circumstances. We believe that the security forces should have these powers; **we recommend that section 13 of the 1973 Act should be amended to include a power to search for and seize communications equipment unlawfully held or suspected of being used for an unlawful purpose.** We have been assured that the types of equipment or attachments to standard equipment which are used for illegal purposes are easily identifiable, and we consider it essential that the extended powers to enable the security forces to seize such equipment should be so phrased as to exclude the possibility of seizure of normal domestic radio and television receivers which are being used legally.

Section 16

89. Section 16 of the 1973 Act, under which the members of the security forces may stop and question any person, states that:

"Any member of Her Majesty's forces on duty or any constable may

stop and question any person for the purpose of ascertaining that person's identity and movements and what he knows concerning any recent explosion or any other incident endangering life or concerning any person killed or injured in any such explosion or incident."

This section is open to the interpretation that the security forces have no power to stop a person merely to establish his identity. In fact they exercise this power frequently, for example, at vehicle control points, and we are in no doubt that they need it to do their job properly. **We therefore recommend in order to put the matter beyond doubt that section 16(1) should be amended by the addition at the end of the words:**

"or any one or more of these matters".

Section 28

90. The question has been raised whether the word "constable", which by section 28(1) of the Act includes military policemen, also includes military policewomen. Military policewomen form an integral part of the Royal Military Police, and **we recommend that this section be amended to eliminate any doubt on this matter.**

Periods of Detention Following Arrest

91. We have received some representations that the periods of four hours and 72 hours, specified in sections 12 and 10 respectively of the 1973 Act, are too short and other representations that they are too long. Our conclusion is that they are about right. We noted however that the Prevention of Terrorism (Temporary Provisions) Act passed in November 1974 confers on the police certain additional powers to detain a person reasonably suspected of being a terrorist for up to seven days with the agreement of the Secretary of State. It has also been suggested that a person held under section 10 or 12 of the 1973 Act and then released may well suffer financial loss, for example, because of hours lost at work, and that where the arrest has been through no fault of his own, there should be some provision for compensation. We have examined these proposals sympathetically but have concluded that it is not possible to draw up a scheme which is equitable in all circumstances and which is not open to significant abuse.

Possible Additional Powers

92. A number of other proposals were made to us concerned with the regulation of cross-border vehicular traffic, the control of motor vehicles, the control of detonators and certain fertilisers used by terrorists to make explosives, and possible means of making it easier to deal with incendiary and "proxy" bombs. These proposals are already under consideration between the Northern Ireland Office and the security forces, and they require consultation in some cases with the Republic of Ireland. We have not therefore enquired into them ourselves in any detail. However, **we strongly recommend that these studies should be pursued thoroughly and urgently.**

93. We have considered whether any changes in the law affecting firearms control are desirable. There are some 101,800 weapons in private ownership, the majority of which are shotguns. We have noted that as a result of stringent controls imposed on firearms dealers the number of dealers has dropped to 203

and will probably be further reduced, and that an Order is being made under section 6 of the Firearms Act 1968 prohibiting the import of any firearms into any area of Northern Ireland without the prior approval of the Chief Officer of Police for the area from which the firearms are to be removed. We understand that consideration is being given to proposals which will provide for stricter control of gun clubs, raising the minimum qualifying age for a firearms certificate from 16 to 18, requiring firearms dealers to notify transactions within the trade, and making the sale of imitation or toy guns unlawful. We understand also that stricter criteria are being applied in the issue of firearms certificates. **We welcome these proposals and good intentions and trust that those requiring legislation will soon be implemented.**

94. We also considered the possible use of identity cards. If the security forces had a ready means of establishing the identity of individuals this could reduce the need for persistent questioning, and consequent resentment at so-called harassment. If the community in Northern Ireland were prepared to accept the desirability of identity cards bearing a photograph and signature it could assist the restoration of order although we appreciate the possibility of forgery. It has recently been decided by the Home Secretary that they should not be introduced in Britain, but this is largely for administrative reasons in a population of 55 rather than 1½ million people. In this connection it is worth recalling that in some democratic countries all adults are required to carry a card to give them access to social security benefits. We make no recommendation but suggest that the question of identity cards in Northern Ireland should not be foreclosed.

Policing

95. Before leaving the question of the powers of the security forces we should like to re-emphasise one aspect which we consider in many ways likely to make a more important contribution to the restoration of order in Northern Ireland than all the powers included in Part II of the 1973 Act. This is the acceptance throughout the whole of Northern Ireland of the Royal Ulster Constabulary as the force responsible for the full range of normal police functions. Many of the powers in Part II of the 1973 Act are necessary to enable the Army to carry out a form of policing in those areas where the police are not at present generally accepted. The methods which the Army has to use, given the short periods of time that most units spend in Northern Ireland and the fact that most soldiers are not trained or experienced in police duties, are more intensive and cause more inconvenience to innocent members of the public than police methods. Although they are effective in reducing terrorism, they are not as effective as normal criminal investigation methods at bringing criminals to trial before the ordinary courts.

96. We believe that there is a widespread desire among a large section of the minority for the return of normal policing to their areas. We were, however, told by many of those who gave evidence to us that they could not yet recommend to their fellow members of the minority community that the Royal Ulster Constabulary be accepted back into their areas. One of the reasons given was the absence of an adequate means of dealing with complaints against the police, combined, as they saw it, with a history of inadequately investigated complaints. In fact the procedures for investigating complaints

against the Royal Ulster Constabulary are already more thorough than those at present in existence anywhere else in the United Kingdom; when a criminal offence is alleged against any member of the police force, the results of the investigation must always be referred to the Director of Public Prosecutions who, if he considers it proper, will institute criminal proceedings. There is also provision under section 13 of the Police Act (Northern Ireland) 1970 for a tribunal incorporating an independent element to be set up by the Police Authority if the circumstances surrounding a complaint justify such action, although no such tribunal has been considered necessary by the Police Authority to date. We found a widespread belief that complaints made against members of the security forces are not taken seriously. We are satisfied that complaints are fully investigated when they are made in the proper quarter, but we can well understand the lack of public confidence in a system in which the police are responsible for investigating complaints against themselves, as is the case in England.

97. Improved machinery for investigating complaints against the police is being considered by the Home Secretary for introduction in England and Wales. It is intended to introduce similar arrangements in Northern Ireland at the same time. However, it may be some time before this happens. It is not self-evident to us that Northern Ireland needs to wait for the remainder of the United Kingdom in this matter. The present arrangements for dealing with complaints differ; the lack of confidence in the police among a section of the population finds no parallel elsewhere in the United Kingdom, and the need to restore that confidence is most urgent.

98. We believe that the introduction of an independent means of investigating complaints against the police would be an important step towards restoring universal confidence in the Royal Ulster Constabulary, and we recommend that this should be established. It should also be considered whether such new procedures should be extended to deal with complaints against the Army. Whatever the arrangements, it is important that it should be clear to all citizens what the appropriate methods of making complaints against the security forces are.

99. We welcome the recent initiative by the Secretary of State to expand the Royal Ulster Constabulary Reserve, and to set up local police centres manned by locally recruited volunteers; we hope that this will be successful and will lead gradually to the introduction of normal policing throughout Northern Ireland and a reduction in the need for the Army to carry out these duties. Effective policing must derive from the community it serves and draw its strength, support and prestige from that community. We therefore hope that, in the very near future, the minority community as a whole will accept and support the police in normal policing duties throughout their areas, and that the leaders of the minority community will find it possible to recommend that members of their community should join the Royal Ulster Constabulary in greater numbers. This is by far the biggest contribution which they could make at present towards dealing with terrorism in their neighbourhoods and it would reduce, and in due course remove, the need for the Army to carry out policing duties.

CHAPTER 5

PRISON ACCOMMODATION AND SPECIAL
CATEGORY PRISONERS

100. The prison system in Northern Ireland has a most important role to play in the maintenance of law and order. We do not believe that it is fulfilling that role adequately at present and, to be blunt, we were appalled at certain aspects of the prison situation.

Existing Prison Accommodation

101. The prison system of Northern Ireland is inevitably under considerable strain. The prison population has risen from 727 at the beginning of 1968 to 2,648 on the 30th November 1974: details are in Appendix E.

102. Prior to 1968 Northern Ireland had only one prison for men, the Crumlin Road Prison built over 100 years ago in the middle of Belfast; Armagh Prison for women is of similar age and in the middle of the city of Armagh. Even before internment began in 1971, Crumlin Road Prison had proved inadequate for all the male convicted prisoners. With detention came the emergency building of a temporary prison at Long Kesh, now the Maze Prison, with accommodation in huts in large compounds rather than in individual cells; subsequently a further temporary prison of a similar type was built at Magilligan. The result is that 71% of male prisoners—1,881 out of a total of 2,648—are now in temporary prisons of the compound type rather than in conventional cellular accommodation.

103. Prisons of the compound type, each compound holding up to 90 prisoners, are thoroughly unsatisfactory from every point of view; their major disadvantage is that there is virtually a total loss of disciplinary control by the prison authorities inside the compounds, and rehabilitation work is impossible. The sleeping accommodation for those confined in the compounds is in Nissen hut dormitories each holding a maximum of 30 beds. At Magilligan each prisoner has a cubicle, but at the Maze only a few dormitories have been fitted with partitions and most are of the open type. But in neither prison is there accommodation of the cellular type found in permanent prisons. Each compound contains several dormitories, dining and recreation huts, and an open space for exercising, all surrounded by a high wire fence which can easily be breached by determined men. Strong security fences guard the outside perimeter, and watch-towers are placed at numerous points. The Army guards the perimeter and entrances and has a general responsibility for security.

104. We believe that the prison staff, who are in charge of the prisoners, do their best with the limited manpower available, but the layout and construction of the compounds make close and continued supervision impossible. The dormitories are locked at night, but otherwise the prisoners in each compound are very much left to their own devices. There are no facilities for organised employment. Each compound is virtually a self-contained community which keeps the premises it occupies to such standard as it finds acceptable and engages, if it so wishes, in military drills or lectures on military subjects.

Special Category Prisoners

105. A development during the present emergency was the introduction in June 1972, following a hunger strike at Crumlin Road Prison, of a special category status for convicted prisoners. In practice this has meant that any convicted criminal sentenced to more than nine months' imprisonment who claims political motivation and who is acceptable to a compound leader at the Maze or Magilligan Prisons is accorded special status. There were on 30th November 1,119 prisoners in this special category out of a total of 1,771 convicted prisoners (see Appendix E). They are allowed to wear their own clothes and are not required to work. They receive more frequent visits than other prisoners and are allowed food parcels, and can spend their own money in the prison canteen. They are segregated in compounds according to the para-military organisation to which they claim allegiance, in the same way as detainees.

106. The housing of male special category prisoners in compounds means that they are not closely controlled as they would be in a normal cellular prison, discipline within compounds is in practice exercised by compound leaders, and they are more likely to emerge with an increased commitment to terrorism than as reformed citizens. The special category prisoners regard themselves in much the same light as detainees, expecting that an amnesty will result in their not having to serve in full the sentences imposed on them by the courts, and the para-military organisations find it easy to encourage this misunderstanding in the public mind for propaganda purposes. The result of this is that the sentences passed in the courts for murder and other serious crimes have lost much of their deterrent effect.

107. **Although recognising the pressures on those responsible at the time, we have come to the conclusion that the introduction of special category status was a serious mistake;** we even have some doubt as to whether its introduction administratively by a surprisingly liberal interpretation of Prison Rules was legal. **It should be made absolutely clear that special category prisoners can expect no amnesty and will have to serve their sentences.** We can see no justification for granting privileges to a large number of criminals convicted of very serious crimes, in many cases murder, merely because they claim political motivation. It supports their own view, which society must reject, that their political motivation in some way justifies their crimes. Finally, it is unfair to ordinary criminals, often guilty of far less serious crimes, who are subject to normal prison discipline.

108. We recognise that to remove the privileges from existing special category prisoners would cause trouble within the prisons, not least because of the low level of control afforded by the compound-type of accommodation. We also recognise the difficulty facing the authorities in the present state of prison accommodation in providing work and proper prison discipline for these prisoners. On present plans it does not seem that it will be feasible to begin to phase out special category status on any scale until the new temporary cellular prison accommodation, recently announced by the Secretary of State, is ready in early 1976. This date must be brought forward, either by urgently adapting part of the Maze Prison if our recommendation below for moving detainees to a separate prison is accepted, or by completing the new cellular

accommodation earlier as we also recommend below. Any necessary preparatory steps, such as the equipment of the necessary workshops and recruitment of appropriate staff, should be planned now and taken in good time. **Nevertheless we recommend that the earliest practicable opportunity should be taken to end the special category.** The first priority should be to stop admitting new prisoners to special category.

The Housing of Detainees

109. Delegates from the International Committee of the Red Cross regularly visit prisons in Northern Ireland to study and report on the conditions of detainees. Their report of May 1974 notes that, detention "contrary to initial expectations three years ago, is taking on an increasingly permanent character" and that "very little change can be reported with regard to the conditions of detention." They are "increasingly discouraged by the intractable character of the problems involved in the situation in Northern Ireland." While acknowledging that the prison administration has made great efforts to improve conditions they criticised the unsuitability of the site and Nissen huts as permanent accommodation, and laid considerable stress on "an increase in mental and moral tensions conducive to psychological problems, leading in their turn to stress and tension among detainees and frustration leading to vandalism or apathy."

110. The Government must make provision for the housing of detainees which recognises the distinction between them and convicted criminals; the present arrangements completely fail to do so. Detainees and special category prisoners are kept in similar conditions and in the same prison. **Detainees should be kept in a completely separate prison.** If a suitable army camp or other large building cannot be converted quickly, **we recommend the construction of a new temporary prison** for this purpose by the quickest possible means. This could be done in a few months; if detention comes to an end, the accommodation could be used for convicted prisoners. The accommodation should be so constructed as to assist the further segregation of detainees; those who are held under interim custody orders, young detainees, those detainees whose involvement in terrorism is weak and detainees who are fully committed, should all be kept apart. At present these distinctions are not made, with the result that all come under the influence of the worst.

The Housing of Young Prisoners

111. On 30th November 1974, 86 young convicted prisoners between the ages of 17 and 21 years were housed in a separate compound at the Maze and 32 in the same age group were held at Magilligan. These young men do not have special category status, and it seems that the main purpose of their being confined at the Maze and Magilligan is that they should be available to undertake those tasks which in a normal prison environment are undertaken by the prisoners themselves, for example, minor maintenance jobs and assisting in the kitchens. Detainees and special category prisoners are exempt from work, and the young prisoners therefore play an important role in the running of the prisons concerned. Nevertheless, we consider that this should not be allowed to obscure the fact that where young prisoners are used in this way it means

that the training and rehabilitation measures which are particularly important in their case are largely neglected, and **we recommend that urgent steps be taken to house them more suitably, and to provide proper training.** This must not wait until the planned new offenders' centre at Hydebank Wood is completed in mid-1977; in any case this will only cater for those among them serving sentences of less than three years.

New Prison Accommodation

112. Existing cellular prison accommodation for men was already inadequate in early 1971, and, as long ago as December 1971 a report by Sir Charles Cunningham made it clear that a new secure permanent prison of modern design was needed. The Prime Minister of Northern Ireland said in a debate in the Northern Ireland Parliament on 11th January 1972:

“ This is, of course, a long term solution which as the report makes clear, could not be put into effect for some years, but the implications of the recommendation are receiving the Government's immediate and determined study.” (H.C. Debs. Northern Ireland, Vol. 83, Col. 1547).

Responsibility passed to the Westminster Government with direct rule in March 1972 and on 1st January 1974 to the Northern Ireland Office as a reserved function when the Northern Ireland Executive was set up. During that time not one brick has been laid towards the building of such a prison, and the Secretary of State's announcement on 18th November 1974 revealed that a site at Maghaberry had only just been decided upon. There will be a further delay while a public enquiry is held into its compulsory acquisition.

113. The present situation of Northern Ireland's prisons is so serious that the provision of adequate prison accommodation demands that priority be given to it by the Government in terms of money, materials and skilled labour such as has been accorded to no public project since the Second World War. **Specifically we recommend that the Government find suitable sites on which building can start immediately on both the proposed temporary cellular prison for 700 and the permanent prison for 400-500.** We believe that they could at once evacuate a camp or barracks on Government land and begin building or adaptation within a few days if the will was there. If no Government sites are available, emergency legislation should be passed to give the Secretary of State general powers to acquire suitable sites at once without the delays consequent on normal compulsory purchase and planning procedure.

114. At present the prison population is still rising rapidly. It went up by 786 (or 50%) in 1973, and has risen by a further 489 (or 21%) so far this year. Increases of this order seem likely to continue, and if so, the recently announced programme is scarcely adequate and, even if speeded up, may well fall far behind what is needed. When the numbers in prison do eventually decline there will be every argument for discontinuing the use of the old prisons at Crumlin Road and Armagh.

115. The failure of successive administrations to take earlier action has significantly reduced the effectiveness of the penal system. This situation must not be allowed to continue. Clearly however, large numbers of prisoners will have to be kept in compounds for some time to come. **We recommend**

that the design of compounds be modified to improve internal security and reduce the size of compounds considerably; a start should be made as the Maze is rebuilt. The influence of the terrorist leaders must be reduced and rehabilitation work started.

Staffing

116. The shortage of prison staff exacerbates the defects in the prison system. We fully recognise the difficulty of attracting suitable people in Northern Ireland to undertake work which is always arduous and demanding, involving long hours and danger. The prison service has nevertheless been expanding very rapidly; out of a total of 700 basic grade officers, 635 have under five years' service. The situation however demands that even greater efforts be made to find prison officers and staff to assist in education, prison employment and rehabilitation. A number of people suggested to us that the pay of prison staff, although high because of large amounts of overtime, did not take sufficient account of the arduous and dangerous nature of the work when compared with that of other forms of employment; **we share this view and recommend that the rates of pay and allowances should be reviewed with a view to attracting more recruits.** In the short term we believe that additional efforts must be made to recruit staff from Great Britain, and that the possibility of attracting staff from Commonwealth countries such as Canada, Australia and New Zealand should be examined. Special grants and allowances are already used to attract officers from Great Britain on a temporary basis; **we recommend that these inducements should be raised, and if necessary widened in scope, to attract greater numbers of experienced staff.** The efforts and sacrifices already made by the English and Scottish prison authorities are considerable and have played an important part in maintaining the prison system in Northern Ireland. The present prison situation in Northern Ireland is so serious that the prison authorities in the remainder of the United Kingdom, despite their own recruitment difficulties, must make even greater efforts to help the Northern Ireland prisons.

117. We cannot pass from this part of our report without paying tribute to the Prison Service of Northern Ireland. Long before the demands of the present emergency, and when its numbers were relatively small, it had gained a deserved reputation for its devotion to duty and its high standards. Despite a rapid expansion over the last few years and a lower proportion of experienced officers, it has maintained these qualities and has continued to discharge its difficult and hazardous tasks in a manner that has earned the thanks and respect of the community.

CHAPTER 6

DETENTION

118. Detention involves a decision by Government to deprive individuals of their liberty without trial and without the normal safeguards which the law provides for the protection of the accused. It is an executive and not a judicial process. It is not known to the common law, and is only justified in a democratic society in times of the gravest emergency, for the purpose of the greater protection of the public. The continuation of such a system in Northern Ireland for a period of more than three years raises serious questions.

119. In the period 1st July 1973 to 30th November 1974 a total of 473 detainees were released (Appendix F, Table 1); but the emergency situation has continued, and in the same period, 484 interim custody orders have been made (Appendix F, Table 2). The total number of detainees has thus remained high; 540 are at present held in detention, of whom 22 are women at Armagh Prison. Of those detained at 30th November 1974, 63 had been detained for more than two years, and 15 of these for more than three years. Of the remainder, 243 had been detained for between one and two years; and 234 for less than a year.

120. In this section, we deal with the present procedures for detention; with the arguments which have been presented to us for and against the continuation of detention and our own view of the matter; and finally we make administrative recommendations.

Present Procedures

121. The detention of an alleged terrorist follows an arrest under section 10 of the 1973 Act and the procedures for his detention and eventual release are set out in schedule 1 to the Act. The procedure begins with the making by the Secretary of State of an interim custody order for the temporary detention of the suspected terrorist. The order is usually made after his arrest, although it can be made before arrest. It can only be made on the authority of the Secretary of State and is usually signed by him, although it can be signed by a Minister of State or Under-Secretary of State.

122. Before an order can be made, it must appear to the Secretary of State that the person is suspected of having been concerned in the commission or attempted commission of an act of terrorism or in the direction, organisation or training of persons for the purpose of terrorism. Before the Secretary of State can reach a conclusion as to whether or not any of these criteria is *prima facie* satisfied, police and army intelligence reports and other information are evaluated, graded and summarised by the security agencies and officials in the Northern Ireland Office. The information about and allegations against the suspected terrorist are then presented in summary form, with recommendations, to the Secretary of State. The decision whether or not to make an interim custody order will be based upon this evidence, but will be related to current security and political situations at local and general level in Northern Ireland. Thus far the procedure has been executive in character; at this stage it becomes quasi-judicial.

123. A suspected terrorist cannot be detained under an interim custody order for more than 28 days unless his case is referred by the Chief Constable of the Royal Ulster Constabulary to a Commissioner for determination. Once the referral has taken place the suspected terrorist can be detained until his case is determined. At present many months may elapse between the referral and determination of the case. Not less than seven days before the hearing of his case the suspected terrorist must be served with a notice in writing specifying the nature of the terrorist activities alleged against him. Because there is frequently a long time between the referral and the date of the hearing of a case, he may not receive this notice for many months.

124. The hearing of the case is before one of about 20 Commissioners, most of whom are Scottish sheriffs, English circuit judges or part-time recorders. Naturally they vary in their qualities, experience and aptitudes for the discharge of their difficult responsibilities in a strange jurisdiction. These variations in their turn produce variations in approach and conclusions by individual Commissioners.

125. The hearing of a case takes place in the Maze complex, where the Commissioners also reside separated from the detainees and prisoners only by screening and wire.

126. At the hearing, the Commissioner's task is to enquire into the case for the purpose of deciding whether or not he is satisfied that:

- (a) the suspected terrorist has been concerned in the commission or attempted commission of any act of terrorism, or the direction, organisation or training of persons for the purpose of terrorism; and
- (b) his detention is necessary for the protection of the public.

Most Commissioners apply a standard of proof to be equated with the phrase "a very high degree of probability". If such a standard is reached, they are "satisfied".

127. If the Commissioner is satisfied that (a) and (b) above are established, he must make an order detaining the suspect. Otherwise, he must direct his release. Therefore at this stage the decision to detain or release is made quasi-judicially and independently of the executive branch of government.

128. The hearing before the Commissioner, which can last between one and four days, is held in private and has become adversarial in form. Leading counsel are often engaged by both the Crown and the "respondents" as the suspected terrorists are called; the Crown pays the legal costs of both sides. Counsel for the Crown have always been members of the English Bar, and counsel for the respondents have been members of the Northern Ireland Bar. This decision was made to reduce the risks to the Northern Ireland Bar and the pressure which would be brought upon their limited numbers if they were instructed to appear for the Crown in detention proceedings.

129. A hearing cannot be held in the absence of the respondent. Individual respondents or groups of respondents have often refused to attend hearings. This has resulted in the time of witnesses and Commissioners being wasted and in an overall delay in the disposal of cases. At present there is a complete

refusal by all Republican respondents to attend hearings, with the result that no Republican cases are being disposed of.

130. The evidence for the Crown is given almost exclusively by Army officers and police officers, who are usually members of Special Branch. Normally they give their evidence behind screens, so that they cannot be identified by the respondent or his legal advisers. Sometimes voice scramblers are used as a further precaution. Occasionally, despite these precautions, respondents do identify witnesses. It is necessary that the identity of many witnesses should not be revealed, for their own safety and also in the general interests of public security. A serious consequence of the concealment of identity of witnesses is that the respondent's lawyer is handicapped in the cross-examination which is essential for an effective adversarial procedure.

131. The evidence given by these witnesses is, in the main, hearsay—first-hand, second-hand or even of remoter degree. It is derived from various sources, such as eye-witnesses of terrorist activities or from relations and neighbours of respondents and accomplices of respondents. Much of it is derived from information from paid informers, who receive payment varying from beer money to weekly wages and even substantial lump sums; some of them have criminal records. They do not attend the hearings, either because it would be too dangerous for them to do so, or because they are afraid. Evidence from such sources requires penetrating examination. The provenance or pedigree of the hearsay has to be probed in order that the credit-worthiness of the informants and the accuracy of their information or the weight of the evidence can be evaluated.

132. Such probing cannot be done in the hearing of the respondent or his lawyers, because the lives of the sources or informants would be at risk, and in consequence necessary counter-terrorist intelligence would cease to come to the security forces. For this reason Crown witnesses frequently have to refuse to answer questions or have to give evasive answers in open session. The procedure allows for such evidence to be given in camera; with the respondent and his lawyers temporarily excluded from the hearing. The result is that, although the respondent can be cross-examined as to his credit, his accuser cannot be. In most cases the important evidence is given during sessions held in camera and the respondent and his lawyers are necessarily unaware of it. During these sessions the Crown lawyers and the Commissioners have regard for the interests of the respondent and do their best to probe and evaluate the hearsay evidence.

133. At the conclusion of the restricted session, the Commissioner informs the respondent and his lawyers of the nature of the evidence given in camera, and his reasons for hearing it in this manner. The information given by the Commissioner is in precis form. The content of it is dependent upon security considerations and may be of minimal or no assistance to the respondent or his lawyers in the cross-examination of Crown witnesses and the meeting of allegations.

134. Usually respondents give evidence on their own behalf, although some Republicans, as a matter of principle, have taken no active part in the hearings and do not give evidence. If respondents give evidence, they are

liable to cross-examination by the Crown. However, such cross-examination is necessarily limited in scope and value because the cross-examiner is inhibited from asking any questions which might indicate the nature of the evidence given in camera or the identity of an informant.

135. If the Commissioner signs a Detention Order, the respondent may appeal to the Appeals Tribunal consisting of three members. Until recently Commissioners did not sit as members of the Tribunal, with the consequence that no members of the Tribunal had direct experience of the atmosphere and difficulties of Commissioners' hearings. The decisions of the Appeals Tribunal seem in many cases to have been reached upon evaluation of the written notes made by the Commissioners at the hearing, and of documentary evidence, some of which was not produced or explained in oral evidence at the hearing before the Commissioner.

136. When a person has been made subject to a detention order and any subsequent appeal has been unsuccessful, he may be released from custody either by decision of a Commissioner when the case is referred to him for review by the Secretary of State, or by direction of the Secretary of State. Both methods of release have been extensively used in the past 12 months. The first is quasi-judicial in form and the second is an executive action.

137. The Secretary of State is obliged to refer to a Commissioner for review, the case of any person who has been detained for more than one year since the making of a detention order or for six months from the determination of the last review. The procedure at a review is similar to that at the original hearing before the Commissioner, but the hearings are much shorter. Four or more reviews can be completed in a day.

138. On a review, the Commissioner must direct the discharge of the detainee, unless he considers that his continued detention is necessary for the protection of the public. Unfortunately, only scanty information is available for the Commissioner's consideration. Some information will be available about the nature and general level of terrorist activity in the detainee's home community. However, little or no information will be available upon which the Commissioner can decide the important question of the detainee's attitude. As the male detainee will have been incarcerated in the Maze in a large compound for many months, there will be little guidance as to whether or not he has had a change of heart.

The Future of Detention

139. Many witnesses before the Committee were particularly concerned about the future of detention. These included representatives of political parties and many voluntary organisations. In addition, various members of the Committee have talked to detainees from both communities in the Maze and at Armagh. We think it right to set down in some detail the many arguments we heard both in favour of continuing detention and in favour of abandoning it.

The Arguments for Detention

140. Those in favour of detention argue that, when times are relatively normal, the needs of an ordered society may be met by the criminal courts

functioning with a high regard for the common law's presumption of innocence and a strict observance of the rules of evidence and the standard of proof. But when normal conditions give way to grave disorder and lawlessness, with extensive terrorism causing widespread loss of life and limb and the wholesale destruction of property, the courts cannot be expected to maintain peace and order in the community if they have to act alone. The very safeguards of the law then become the means by which it may be circumvented. Terrorism means widespread intimidation in all sections of the community. Material witnesses refuse to testify on peril of their lives, and the law will not accept hearsay evidence; furthermore police officers who have knowledge and belief about the commission of certain offences may find their conclusions inadmissible in court, because they cannot satisfy the law's necessarily stringent requirements.

141. It was argued that the degree of terrorism in the summer of 1971 was such that the introduction of internment (later changed to detention under the Detention of Terrorists (Northern Ireland) Order, 1972) seemed the most effective procedure for the control of terrorism and the protection of the public. Terrorism has persisted in Northern Ireland with greater violence than at any time in the past century. The argument continued that many of those now detained constitute an implacable and determined body who would, if released in existing circumstances, add fresh vigour to the para-military organisations; that this would inevitably result in further casualties to the security forces and the civilian population, and add appreciably to the widespread destruction and loss of property which the public has had to endure.

142. The argument proceeded that there is nothing to show from previous experience that political gestures resulting in large-scale releases have reduced the level of violence. On the introduction of direct rule in March 1972, for instance, the then Secretary of State commenced a programme of releases aimed at restoring a measure of goodwill. In the following four months, fresh detentions virtually ceased, and 562 internees were released; but violence mounted to fresh heights. In the same period, nearly 6,000 shooting incidents and 500 explosions killed 192 people and injured many more, culminating in the events of "Bloody Friday", 21st July 1972.

143. It is therefore argued, that though detention is unacceptable in most circumstances, it is necessary and should continue in the unusual and violent circumstances which still exist in Northern Ireland. As noted in paragraph 27 we have detailed evidence of 482 cases of intimidation of witnesses between 1st January 1972 and 31st August 1974: and there must be many more. Civilian witnesses to murder and other terrorist offences are either too afraid to make any statement at all, or, having made a statement identifying the criminal, refuse in any circumstances to give evidence in court. The prevalence of murder and knee-capping make this only too easy to understand.

The Arguments Against Detention

144. On the other hand, those against detention contended that it brought the law into contempt. Detention operates in an atmosphere of secrecy and distrust which undermines sound community life. The system of using as evidence intelligence obtained from paid informers is basically unacceptable to

many people, and fragments the trust in human relationships which is the basis of all healthy social exchange.

145. Although the quasi-judicial system of Commissioners' hearings and reviews operates with a scrupulous regard for the principles of justice, and produces just decisions in the majority of cases, it is not perceived as being just by members of the general public. Delays, the admission of hearsay evidence, the inability to cross-examine witnesses and the lowered standard of proof have provided much material for propaganda on the grounds that this is not "British justice", and the high regard for the law which is a feature of civilised societies is being used against authority rather than in support of it.

146. Witnesses have told us that detention in the Maze is an embittering experience which causes deep resentment among detainees and their families, and through them a widening public; conditions at the Maze, the indefinite duration of detention, the hardships caused to dependants, all contribute.

147. It was argued that detention facilitates the growth of terrorist networks rather than weakening them; that detainees who are released often go back to the community more hostile to authority, and more skilled in the means of violence than at the time of their arrest, in other words, from the point of view of the para-military organisations, the Maze Prison provides a recruiting agency and a school for terrorists with all expenses paid. Moreover, it creates a myth of oppression which is becoming part of the terrorist legend.

The Committee's Conclusions

148. After long and anxious consideration, we are of the opinion that detention cannot remain as a long-term policy. In the short term, it may be an effective means of containing violence, but the prolonged effects of the use of detention are ultimately inimical to community life, fan a widespread sense of grievance and injustice, and obstruct those elements in Northern Ireland society which could lead to reconciliation. Detention can only be tolerated in a democratic society in the most extreme circumstances; it must be used with the utmost restraint and retained only as long as it is strictly necessary. We would like to be able to recommend that the time has come to abolish detention; but the present level of violence, the risks of increased violence, and the difficulty of predicting events even a few months ahead make it impossible for us to put forward a precise recommendation on the timing.

149. We think that this grave decision can only be made by the Government. Only they can decide the time, taking into account a wide range of political, social and economic factors, as well as the security situation; but there are a number of essential measures, associated with the immediate reform and eventual abolition of detention, on which we make recommendations for action.

Criticisms of Present Detention Procedures

150. We have received evidence and heard witnesses about the detention of terrorists procedures now in operation. The witnesses have included politicians, the senior Commissioner at the Maze, lawyers who have acted either for the Crown or for detainees in the quasi-judicial proceedings at the Maze, and members of the security forces. Much of the evidence has been critical of

various aspects of the procedures and we consider that this criticism is well-informed, based upon experience and justified. We have had the opportunity of judging the present procedures and the criticisms of them by evaluation of documents of a confidential nature relating to various detainees and various aspects of the procedures. We have been assisted in the evaluation by explanations from officials in the Northern Ireland Office and others.

151. In saying that the criticisms of the procedures are to a large extent justified we should like to emphasize that the officials, lawyers and others, who have taken part in the operation of those procedures, have in our view acted *bona fide* in the difficult task of balancing the obligation of fairness to a person suspected of terrorism and the obligation of protecting the public from the dangers of terrorism.

152. The most cogent criticism was that the procedures are unsatisfactory, or even farcical, if considered as judicial. The adversarial method of trial is reduced to impotence by the needs of security. The use of screens and voice scramblers, the overwhelming amount of hearsay evidence and the *in camera* sessions are totally alien to ordinary trial procedures. The quasi-judicial procedures are a veneer to an enquiry which, to be effective, inevitably has no relationship to common law procedures.

153. The introduction of the quasi-judicial procedures was well intentioned. Its object was to give the person suspected of terrorism every opportunity consistent with security to challenge and test the allegations made against him. Its apparent similarity to the ordinary judicial process has had the side effect of tending to bring the ordinary processes of law in Northern Ireland into disrepute.

154. Strong criticism was made of the nature of the evidence tendered before the Commissioners. This criticism is valid to the extent that the adversarial quasi-judicial procedures are unsatisfactory for testing the reliability of evidence from paid informers and accomplices of terrorists. The most effective testing of such evidence can only with safety be conducted in a situation of the utmost confidentiality.

155. The delays, now about six months, which occur before the persons suspected of terrorism have an adjudication by a Commissioner are serious, especially as a substantial proportion of detainees are at present being released on first hearing because both the criteria laid down in paragraph 12 of schedule 1 of the 1973 Act have not been satisfied. We consider that the blame for these delays can be attributed to the basic unsuitability of the system and procedures for the numbers of people passing through them.

156. It was said that the Commissioners varied in quality and consistency of approach. We think that this contention has some validity. Commissioners sit alone exercising an alien jurisdiction. When they first sit they are totally unfamiliar with Northern Ireland with all its regional and cultural nuances. They have to take a note of the evidence, assess the evidence and be on their guard for a breach of security in an atmosphere of screens, voice scramblers and pseudo-adversarial contest. These factors indicate the desirability of a

tribunal sitting in plurality. Nevertheless we are satisfied that the Commissioners have acted with fairness and conscientiousness.

157. The review procedure by the Commissioners was almost universally condemned. This in our view was no fault of the Commissioners but resulted from the almost complete lack of worthwhile material available to the Commissioners in the conduct of a review.

158. In the light of these criticisms we recommend that the existing arrangements provided in schedule 1 to the 1973 Act be repealed and replaced by the provisions below.

Proposed Detention Procedures

159. The deprivation of the liberty of an individual by extra-judicial process is a very serious decision for the government of a civilised democratic country to take and can be justified only if that individual's continued presence in the community would seriously endanger the general security of the public. **We therefore recommend that the sole and ultimate responsibility for the detention of individuals should be that of the Secretary of State, onerous as that may be.** His responsibility for detention should not be capable of delegation to any Minister of State or Under-Secretary of State; in the absence or unavailability of the Secretary of State for Northern Ireland, this responsibility can be discharged by another Secretary of State. The procedures which we recommend are set out in Appendix G.

160. Nevertheless the public interest and the interests of individuals suspected of terrorism require the existence of a body, independent of the executive, to carry out an effective investigation of individual cases. **We therefore recommend the creation of a Detention Advisory Board to carry out the investigation of the cases of individuals proposed for detention.** The Board should have advisory duties but no executive power to detain.

Detention Advisory Board

161. **We recommend that the enquiry should take place in private and that witnesses should be questioned individually and alone, without legal representation.** The Board should have full powers to question any person and to obtain documents relevant to the enquiry. An accurate assessment of the information requires uninhibited investigation. We appreciate that this method of enquiry would deprive the person suspected of terrorism of the basic rights of legal representation and cross-examination. Yet we are convinced it would have a greater opportunity of reaching the truth than the adversarial quasi-judicial method, to the real benefit of any person wrongly suspected of terrorism and of any person whose release would not seriously endanger the general security of the public. **We recommend that the detainee should have the right to make written representations to the Secretary of State who should refer them to the Board and should consider them himself.** The detainee should also have the right to appear before the Board, but not to be legally represented or present when other witnesses are being questioned.

162. **We recommend that members of the Board be whole time holders of judicial office in England and Wales or Scotland.** The membership of the

Board which advises on such a serious matter should be of high standing and carefully selected for their aptitude for the task. We would expect that members of the Board would regard their duties as having priority over their other judicial duties and that the Lord Chancellor and the Secretary of State for Scotland would accept that priority.

163. We recommend that membership of the Board be limited to seven to ensure continuity, three of whom should constitute a division for investigating cases. The deprivation of a citizen's liberty by executive action and extra-judicial process is such a grave step that the responsibility for investigating a case, and making recommendations which may lead to a detention order, merits consideration by more than one person, however carefully selected. It would be impossible for an individual at the same time to probe in depth by questioning a witness, to take a note of the questions and answers, and to evaluate the evidence in the context of other information and documents. To ensure thorough investigation of each case in private and a consistency of approach a plural board is necessary.

164. We would expect the Secretary of State to appoint as secretary to the Board a solicitor or civil servant of sufficient standing to facilitate the speedy production of documents and witnesses from government departments and the security forces.

165. Delay has been a serious defect in the present procedures and our proposals are designed to prevent delays. If the Secretary of State himself has thoroughly vetted all the documentary evidence available before signing a provisional custody order, as we suggest it should be called, we do not consider that any provisions for the extension of the time limits are required. We recommend that from the date of the making of the provisional custody order:

- (a) 7 days be allowed for service of a written notice upon the detainee setting out the nature of the terrorist activities alleged against him;**
- (b) a further 21 days be allowed for the Board to submit their written report to the Secretary of State;**
- (c) a further 7 days be allowed for the Secretary of State's decision as to whether to make a confirmed custody order or to direct the detainee's release.**

Any non-compliance with these time limits should entitle the detainee to automatic release.

Criteria for Detention

166. To ensure that in future the power to detain is exercised with great restraint, we have already recommended as set out in detail in paragraph 159 that the Secretary of State should have a much greater degree of personal responsibility for the detention of an individual from the earliest possible stage of the detention process and at all subsequent stages. At present, one of the criteria for the making of a Detention Order is that the detention of an individual is necessary for the protection of the public. We recommend the raising of this criterion (see Appendix G) so that a person should be detained only if his freedom would seriously endanger the general security of the public.

This higher criterion reflects our concern that detention, while it remains, should be used sparingly. The other existing criterion, in our view, is still appropriate, but **we recommend that it should be amended to include the recruitment of persons for the purpose of terrorism** and the definition of terrorism recommended in paragraph 71 should apply.

Release Procedures

167. Without prejudice to the question of whether the end of detention comes sooner or later, we now turn to the means of release. There are still over 500 people in detention. The rate of release in the past few months has varied from 30 to 50 per month (Appendix F). Many detainees have been confined in the Maze Prison for long periods—some since August 1971. Northern Ireland simply cannot afford to keep this large body of men—many of them young, and with the major part of their lives before them—in a form of captivity which arouses reactions of distaste in all sections of the community, and open opposition in some.

168. The present arrangements, whereby release is effected at short notice and detainees are put outside the gates of the Maze with little or nothing in the way of advice and assistance for the future, do nothing to lessen their alienation and much to exacerbate it. Detainees should not be sent home without some positive attempt to help them in resettlement. How this can be done depends on the method adopted for release.

169. Some witnesses have recommended that the end of detention should be sudden and dramatic, involving the simultaneous release of all detainees. They saw it as an act of faith which might lead to a fresh start in a community weary of violence. Other witnesses advocated a rate of release closely associated with the fluctuating level of violence in the community, increasing releases when there is a lull in para-military activity, and halting them when violence flares up.

170. We think that the risk of a sudden end to detention would be too great, since it would send back into the community, at one time and with their present organisation intact, a large number of men and some women who have devoted much of their time in detention to the study of methods of violence and whose bitter sense of alienation is unhealed. Release linked to the state of violence in the community, on the other hand, would lend substance to the detainees' complaint that they are being used as "political hostages"; that if outside violence halts releases, they are being penalised for the activities of others rather than for what they themselves are alleged to have done. We do not think that such a policy is consistent with the requirements of social justice.

171. In our view the most appropriate release policy in such circumstances as we can foresee would be an ordered process for which preparation must be made in advance. Detainees might be released in an order related to their potential for peaceful resettlement and the likelihood of thus becoming reinvolved in para-military activity. This policy would make it possible to introduce a resettlement scheme (which necessarily requires a regular intake and a steady flow) and to examine each case individually.

Release Advisory Committee

172. We recommend that the sole responsibility for the release of detainees should be that of the Secretary of State. To replace the existing review procedure we recommend that a **Release Advisory Committee be set up to advise the Secretary of State.** The Committee's function should be to consider the case of each detainee referred to them and to advise the Secretary of State whether the detainee should be released, with or without conditions. The Secretary of State should refer the case of each detainee to the Committee at least annually, and should personally reconsider the case of each detainee annually.

173. Membership of the Committee might include a lawyer, a medical consultant, a senior social worker and other responsible people. Though appointed by Government, the Committee would carry out its work on behalf of the community and as the community's representatives. Members would require good preparatory documentation, including a report from the security forces, a report from the prison authorities, and a report on the detainee's home circumstances possibly including correspondence from community leaders in his home area. Wherever possible detainees should not be returned to home circumstances in which they are likely to be intimidated or persuaded back into para-military activity by neighbourhood or home contacts. The Committee would be able to consider both the detainee's past record and his future potential, but on the whole we think that less regard should be paid to the past (which is a matter of allegation, since he has not been convicted in a court of law) than to the probability of a stable and peaceful future.

174. The Committee would have power to advise the Secretary of State to impose conditions on release, such as a requirement to move to a fresh area, with the sanction that the breaking of conditions might result in re-detention. Its task would be to assess whether the detainee had an honest intention of refraining from terrorism; whether his future actions would be likely to constitute a serious risk to society; and whether he would be accepted back into the community.

175. The Release Advisory Committee should be small enough for the proceedings to be relatively informal and to involve genuine dialogue with the detainee. Since a full-time Committee might not attract people of sufficiently high calibre, **we recommend the creation of a panel of members able to serve one or two days a week, from which a Committee could be constituted for a particular session.** They should be paid a part-time salary commensurate with the importance of the work, and any particular Committee should not attempt to deal with more than three or four cases per day, so that each can be given full consideration.

176. Our proposals relating to the Release Advisory Committee are set out more fully in Part 3 of Appendix G. Those proposals do not prescribe in detail the powers and duties of the Committee because we consider that it should have an informal approach which inevitably will vary in application to suit the individual problems of each detainee. The very success of the Committee will depend upon its ability to operate without a legal strait-jacket. On the other hand, Parts 1 and 2 of Appendix G strictly circumscribe the powers

and duties of the Secretary of State and the Detention Advisory Board because these parts deal with detention, that is, the deprivation of a citizen's liberty.

177. We have outlined in paragraphs 173 to 176 the procedure recommended for the constitution of a Release Advisory Committee. **We recommend also the establishment of a small pre-release centre**, physically separate from the Maze or any other prison, where detainees could be given personal assistance with the immediate problems of resettlement. Details of these proposals are given in Appendix H. **We also recommend that a major non-governmental organisation, possibly a charitable trust, should be invited to mount a longer-term scheme of assistance involving cash grants to ex-detainees and their families in cases of special need.**

178. The implementation of these arrangements for the release and resettlement of detainees does not depend on a decision to end detention. The present arrangements are so unsatisfactory that our recommendations should be acted upon at once.

Transitional Provisions

179. Transitional provisions will be required to cover the position of detainees held under interim custody orders and detention orders when the present procedures are revoked, as we recommend, to enable them to be referred, as appropriate, to the proposed Detention Advisory Board and Release Advisory Committee. The details of such transitional procedures will depend upon the number of persons held in detention at the time, and so we make no detailed recommendations about the form which they should take.

CHAPTER 7

SUMMARY OF CONCLUSIONS AND
RECOMMENDATIONS

<i>Number</i>		<i>Paragraph</i>	<i>Page</i>
	CHAPTER 1: GENERAL CONSIDERATIONS		
1.	The greater ease with which terrorism can be organised does not legitimise it.	7	4
2.	The problem of communal conflict involves the special international obligations of the Government of the United Kingdom.	10	5
3.	Direct rule imposes upon Westminster the responsibility for policy making, policy implementation and the supervision of administrative services in many fields which are likely to become devolved powers at some future date. The full backing of the United Kingdom as a whole, together with all the necessary resources, must be made available to discharge these responsibilities.	13	6
4.	The British Government has acted legitimately, and consistently with the terms of the European Convention for the Protection of Human Rights and Fundamental Freedoms, in restricting certain fundamental liberties in Northern Ireland.	16	6
5.	The continued existence of emergency powers should be limited both in scope and duration.	21	7
6.	A solution to the problems of Northern Ireland should be worked out in political terms, and must include further measures to promote social justice between classes and communities. Much has been done to improve social conditions in recent years, but much remains to be done. A number of developments are desirable: the implementation of the recommendations of the van Straubenzee Report on Discrimination in the Private Sector of Employment; further improvements in housing; and a new and more positive approach to community relations. Consideration should be given to the enactment of a Bill of Rights.	21	7
	CHAPTER 2: TRIAL PROCEDURES		
7.	Trial by jury is the best form of trial for serious cases, and it should be restored in Northern Ireland as soon as this becomes possible.	26	10

<i>Number</i>		<i>Paragraph</i>	<i>Page</i>
8.	Trials of scheduled offences on indictment should continue to be conducted by courts without juries.	29	10
	The courts under section 2 of the 1973 Act should continue to be constituted by a judge sitting alone.	33	11
9.	Bail applications related to scheduled offences should remain as provided by section 3 of the 1973 Act except that:		
	(i) the section should apply to a judge of the Supreme Court as that term includes judges of the High Court and also the Lords Justices;	35	12
	(ii) County Court judges should have the power to grant bail in the circumstances indicated;	35	12
	(iii) the restriction on the grant of bail pending an appeal should be removed;	36	13
	(iv) a judge of the Supreme Court or the Court of Criminal Appeal should have jurisdiction to grant bail on compassionate grounds;	39	14
	(v) Judges hearing applications for bail should be empowered to grant applications for free legal aid.	40	14
10.	Section 5 of the 1973 Act (admissibility of written statements) should be repealed or allowed to lapse.	44	15
11.	An additional subsection should be added to section 6 of the 1973 Act (admissions of persons charged) to declare the courts' discretion to exclude or disregard statements to which the section relates.	50	17
12.	Section 7 of the 1973 Act (onus of proof in relation to offences of possession) should continue in force.	53	18
13.	It should be made clear by legislation that scheduled offences tried summarily should not be subject to the procedures of Part I of the 1973 Act.	57	19
14.	Section 1 of the Criminal Procedure (Committal for Trial) Act (Northern Ireland) 1968 should be amended on the lines indicated.	57	19
15.	Offences under sections 25 to 33 of the Prison Act (Northern Ireland) 1953, when the prisoner involved had been convicted of or charged with a scheduled offence, should be inserted in the list of scheduled offences.	59	20
16.	Section 22 of the 1973 Act (riotous and disorderly behaviour, etc.) should be repealed.	60	20

<i>Number</i>		<i>Paragraph</i>	<i>Page</i>
17.	The following procedural points in relation to scheduled offences should be implemented:		
	(a) section 2(3) of the 1973 Act should be amended so as to enable a non-scheduled offence, which is associated with a scheduled offence, to be tried with it, if the accused does not object;		
	(b) the reference to the Belfast Recorder's Court in section 4(2) of the 1973 Act should be deleted;		
	(c) section 43(2) of the Magistrates' Courts Act (Northern Ireland) 1964 should be amended as indicated		
	(d) paragraph (a) of section 45 of the Criminal Justice Act 1972 should be applied to preliminary investigations or enquiries before magistrates' courts in Northern Ireland.	61	21
18.	It should be left solely to the discretion of the Attorney General to certify offences, whether applying to the security forces or not, as being non-scheduled when he considers this is to be in the best interests of justice.	62	21
CHAPTER 3: EXISTING AND PROPOSED OFFENCES			
19.	The powers of proscription contained in section 19 of the 1973 Act should be retained.	69	24
20.	A new offence of being concerned in terrorism should be created and included in schedule 4 of the 1973 Act, and:	70	25
	(a) the definition of "terrorist" in section 28(1) of the 1973 Act should be amended to include "recruitment";	70	25
	(b) the definition of "terrorism" in section 28(1) of the 1973 Act be amended to include the use of violence for sectarian ends.	71	25
21.	There should be a new summary offence of being disguised in a public or open place or in the vicinity of a dwelling house.	72	25
22.	It should be made a summary offence for editors, printers and publishers of newspapers to publish anything which purports to be an advertisement for or on behalf of an illegal organisation or part of it.	74	26

<i>Number</i>		<i>Paragraph</i>	<i>Page</i>
23.	The Governors of the British Broadcasting Corporation and the Independent Broadcasting Authority should re-examine the guidance given to programme controllers and companies about contact with terrorist organisations and the reporting of their views and activities.	76	26
	CHAPTER 4: POWERS OF THE SECURITY FORCES		
24.	The existing powers of arrest and search in Part II of the 1973 Act should be retained subject to the following amendments.	85	28
	(a) Section 13 of the 1973 Act should be amended to include a power to search for and seize communications equipment, unlawfully held or suspected of being used for an unlawful purpose.	88	29
	(b) Section 16(1) of the 1973 Act should be amended to clarify the powers of the security forces to stop and question.	89	29
	(c) The definition of the word " constable " in section 28(1) should be amended to make it clear that military police women are included.	90	30
25.	Current studies on the regulation of cross-border vehicular traffic, the control of motor vehicles, the control of detonators and fertilizers and possible means of dealing with incendiary and " proxy " bombs should be pursued thoroughly and urgently.	92	30
26.	Proposals which are in hand for the stricter control of firearms are welcomed and it is hoped that the requisite legislation will soon be implemented.	93	30
27.	An independent means of investigating complaints against the police should be introduced, and its extension to the Army should be considered.	98	32
	CHAPTER 5: PRISON ACCOMMODATION AND SPECIAL CATEGORY PRISONERS		
28.	The prison system plays a most important role in the maintenance of law and order; it is not fulfilling that role adequately at present, and certain aspects of the prison situation are considered to be appalling.	100	33
29.	The introduction of special category status for convicted prisoners was a serious mistake.	107	34

<i>Number</i>		<i>Paragraph</i>	<i>Page</i>
30.	It should be made absolutely clear that special category prisoners can expect no amnesty and will have to serve their sentences.	107	34
31.	The earliest practicable opportunity should be taken to bring special category status to an end.	108	34
32.	Detainees should be kept in a completely separate prison; a new temporary prison for this purpose should be constructed by the quickest possible means.	110	35
33.	Urgent steps should be taken to house young prisoners more suitably and to provide proper training.	111	35
34.	The Government should find suitable sites on which to begin construction immediately of both the temporary cellular prison for 700 and the permanent prison for 400-500, for which plans have already been announced.	113	36
35.	The design of prison compounds should be modified to improve internal security, and their size should be considerably reduced.	115	36
36.	Greater efforts should be made to increase prison staff by:		
	(a) reviewing rates of pay and allowances to attract more recruits.		
	(b) raising special grants and allowances to attract experienced officers from Great Britain.	116	37

CHAPTER 6: DETENTION

37.	Detention cannot remain as a long-term policy. In the short term, it may be an effective means of containing violence, but the prolonged effects of the use of detention are ultimately inimical to community life, fan a widespread sense of grievance and injustice, and obstruct those elements in Northern Ireland society which could lead to reconciliation. Detention can only be tolerated in a democratic society in the most extreme circumstances; it must be used with the utmost restraint and retained only as long as it is strictly necessary. We would like to be able to recommend that the time has come to abolish detention; but the present level of violence, the risks of increased violence, and the difficulty of predicting events even a few months ahead make it impossible to put forward a precise recommendation on the timing. We think that this grave decision can only be made by the Government.	148 149	43 43
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<i>Number</i>		<i>Paragraph</i>	<i>Page</i>
38.	The provisions for the detention of terrorists contained in schedule 1 to the 1973 Act should be repealed.	158	45
39.	The sole and ultimate responsibility for the detention of individuals should be that of the Secretary of State.	159	45
40.	A Detention Advisory Board should be created to carry out the investigation of the cases of individuals proposed for detention. The following provisions should apply in relation to it:	160	45
	(a) the enquiry should take place in private, witnesses being questioned individually and alone, without legal representation;	161	45
	(b) the detainee should have the following rights:		
	(i) the right to make written representations to the Secretary of State who shall refer them to the Board and shall consider them himself; and	161	45
	(ii) the right to appear before the Board but not to be legally represented or present when any other person is being questioned;	161	45
	(c) the Board should consist of full-time holders of judicial office in England and Wales or Scotland, and have a membership limited to seven, three of whom should constitute a division for investigating cases.	162	45
		163	46
41.	From the date of the making of the provisional custody order:		
	(a) seven days should be allowed for service of a written notice upon the detainee setting out the nature of the terrorist activities alleged against him;		
	(b) a further 21 days should be allowed from the service of the notice, for the Board to submit their written report to the Secretary of State;		
	(c) a further seven days should be allowed for the Secretary of State's decision as to whether to make a confirmed custody order or to direct the detainee's release.		
	Any non-compliance with these time limits should entitle the detainee to automatic release.	165	46

<i>Number</i>		<i>Paragraph</i>	<i>Page</i>
42.	The existing criteria specified in paragraph 12 of schedule 1 to the 1973 Act should be amended as follows:		
	(a) the first criterion should include recruitment of persons for the purpose of terrorism;		
	(b) the second criterion should be raised so that that a person should be detained only if his freedom would seriously endanger the general security of the public.	166	46
43.	The most appropriate release policy in such circumstances as we can foresee would be an ordered process for which preparation must be made in advance.	171	47
44.	The sole responsibility for the release of detainees should be that of the Secretary of State.	172	48
45.	A Release Advisory Committee should be set up to advise the Secretary of State; a panel of members able to serve one or two days a week should be created, from which the Committee could be constituted for a particular session.	172 175	48 48
46.	A small pre-release centre should be established.	177	49
47.	A major, non-governmental organisation should be invited to mount a longer-term scheme of assistance to ex-detainees and their families in cases of special need.	177	49

GARDINER

ALASTAIR BUCHAN

J P HIGGINS

KATHLEEN JONES

MICHAEL MORLAND

*MacDERMOTT

JOHN WHYTE

*Signed subject to the reservation on page 57.

LORD MacDERMOTT'S RESERVATION

Having agreed with the other members of the Committee on so many of the questions calling for decision, it was my hope that this unanimity might continue to the end. At our final meeting, however, much revisional work had resulted in new drafts on several matters of importance, and I found it necessary because of this to wait until the final text was complete before reaching a conclusion on these matters. Having done so, I regret I must differ on some of them.

In paragraph 4(c) of Chapter 1, it is said in dealing with political assumptions that in a plural society such as Northern Ireland no political framework can endure "unless (i) both communities share in the responsibility of administering Northern Ireland, and (ii) recognition is given to the different national inheritances of the two communities."

This is an important finding and with the first of its conditions—all the better for putting the emphasis on duties instead of powers—I would express my entire concurrence. But I do not know what the second condition means, what kind of recognition it asks and what national inheritances it is speaking about. This being the case, I see no virtue in subscribing to what I do not understand.

Chapter 1 turns to civil liberties and human rights. This is important as our terms of reference make it clear that our recommendations are to be "consistent to the maximum extent practicable in the circumstances with the preservation of civil liberties and human rights." That I believe the Committee have tried to do respecting all the provisions and powers we have agreed to recommend. But several of the paragraphs, after paragraph 16, appear to doubt the capacity of emergency measures to produce lasting solutions; and lay stress on the social damage which the use of such measures may bring about. This can happen and it is always regrettable. But the object of what the security forces are doing is to stop the campaign of violence and so pave the way for peace. Most of the long-term damage, of the scarring and the misery, is due first and last to the terrorist, and I would find this part of the Report more acceptable and a truer picture of events if it recognised this stark fact more fully.

Just at the end of Chapter 1 a number of developments designed to improve social conditions are mentioned. Most of these rank as acceptable projects: but I do not think the same can be said without much further thought about the suggestion for a Bill of Rights which the Report makes at this point. This is a difficult legislative subject which does not always live up to its expectations. For my part, I would prefer not to see it raised or recommended by this Committee.

Chapter 6 deals with detention and raises what was perhaps the biggest issue the Committee had to decide—should the policy of detention be ended **now**? The last word is important as the criteria necessitate a survey of current

conditions and no one knows what may lie ahead. The whole relevant scene could change in two or three months or even less. The Report marshals the arguments and I need not go over them again. Despite the repugnance which in common with most I feel for a system of detention, the evidence seemed to me conclusive that, with all its many failings and mistakes, detention still helps to protect the public safety and should therefore stand until such time as the Secretary of State may reach a different conclusion. The main protection it renders is to keep a substantial body of hard-core terrorists out of circulation. If those were released there was ample evidence to support the view that terrorism would be intensified and intimidation increased. These are both grave consequences. Most of the gains from detention would be lost, risks to life and limb and property would mount, and more intimidation would mean that the increasing success of the RUC in bringing terrorists to trial before the ordinary criminal courts would be set back.

The conclusion of the Committee on this issue will be found in paragraph 148. As a decision in favour of detention this paragraph makes an uncertain sound and I would have preferred to see it presented differently so that those responsible for the protection of the public could follow the course taken.

When paragraph 148 comes to its last sentence, however, the meaning clears and, as it seems to me, it ends substantially with the view I have already advanced. This is further borne out by what follows—the criticisms of the present detention procedures, their replacement by a Detention Advisory Board and a Release Advisory Committee and the proposed establishment of a Re-settlement Scheme for Detainees.

I am in general agreement with those sweeping changes. I regret that the present quasi-judicial procedures at the Maze Prison should have proved unsatisfactory, for they mark a very genuine effort to give the detainee something he has never been given before; and I share the Report's tribute to the fairness and conscientiousness of the Commissioners.

Paragraph 166 would insert in the criteria for a detention order (new style) the words "his freedom would seriously endanger the general security of the public" instead of the present words "his detention is necessary for the protection of the public."

The idea is to make detention a more discriminating process. But the new wording does not seem to me to accomplish any significant change and it might be better to retain the issue in its existing and well-known form.

MACDERMOTT.

LIST OF WITNESSES

1. The following organisations and individuals gave evidence to the Committee. Those marked * gave oral evidence in addition to a written submission or submissions. Those marked † gave oral evidence only and the remainder (unmarked) made written submissions only.

(1) Northern Ireland Political Parties

- * Alliance Party
- * Democratic Unionist Party
- * Social Democratic and Labour Party
- * Unionist Party of Northern Ireland
- * Ulster Unionist Party
- * Vanguard Unionist Party

(2) Organisations and Individuals

- Amalgamated Union of Engineering Workers (Engineering Section)
- Amnesty International
- * Association for Legal Justice
- * Attorney General
- * P G N Badge Esq
- D Blunt Esq
- * { K Boyle Esq
- Dr T Haddon
- { P Hillyard Esq
- * { Father B J Brady
- Father D Faul
- { Father R Murray
- Dr J W Burton
- Campaign for Democracy in Ulster
- † J Camplisson Esq
- * Catholic Institute for International Relations
- * Central Citizens Defence Committee
- * E W H Christie Esq
- Clerk of the Crown and Peace for Belfast
- * Dr R L Clutterbuck
- E A Comerton Esq
- Connolly Association
- † Lord Diplock
- * Director of Public Prosecutions for Northern Ireland
- W P Doyle Esq QC
- * Headquarters Northern Ireland (Army)
- Professor A Heijder
- Mrs F Houston
- Incorporated Law Society of Northern Ireland
- * N J Jarman Esq
- Lord Kilbracken
- Mrs E B Layton
- * Judge Sir Ian Lewis
- * Lord Chief Justice of Northern Ireland
- W P McCollum Esq QC
- * P McCullough Esq
- * Mr Justice McGonigal
- M Maxwell Esq
- † J Mulvenna Esq
- The Ministry of Defence
- Dr J Narain

- * National Council for Civil Liberties
M Nicholson Esq QC
Northern Ireland Bar Council
- † Northern Ireland Bar (4 Members)
Northern Ireland Committee of the Irish Congress of Trades Unions
- * Northern Ireland Civil Rights Association
Northern Ireland Department of Education
Northern Ireland Department of Health and Social Services
- * Northern Ireland Office
Mr Justice O'Donnell
Police Authority for Northern Ireland
- † Police Federation
- † Police Superintendents' Association
Protestant and Catholic Encounter
- † W B Rankin Esq
- † D Rowlands Esq
- * Royal Ulster Constabulary
C Seagroatt Esq
J M Shearer Esq RM
R J Spjut Esq
P Stonwell Esq
Students' Council, New University of Ulster
Students' Representative Council, Queen's University, Belfast
- * A Temple Esq
Ulster Citizens' Civil Liberties Centre
- † Rt. Hon. W S I Whitelaw MP
Women's International League for Peace and Freedom

2. A sub-committee examining the question of possible resettlement procedures for detainees received evidence from:

- † Professor D T Carter
- † Governor, HM Prison, Maze
- * Northern Ireland Department of Health and Social Services
- * Northern Ireland Department of Manpower Services
- † Northern Ireland Eastern Health and Social Services Board
- † Northern Ireland Office
- † Northern Ireland Probation Service
- † Northern Ireland Supplementary Benefits Commission

STATISTICS OF VIOLENCE

1st January 1971—30th November 1974

	Explosions	Shootings	Deaths			
			Security Forces	Civilians	Terrorists	Total
1971						
January	11	17	0	1	0	1
February	36	75	4	6	2	12
March	30	53	4	0	2	6
April	39	17	0	0	0	0
May	51	33	2	1	1	4
June	53	39	0	0	0	0
July	79	85	2	0	2	4
August	142	182	7	10	18	35
September	186	278	8	6	5	19
October	155	420	15	7	10	32
November	117	243	11	10	2	23
December	123	314	6	27	6	39
Total	1,022	1,756	59	68	48	175
1972						
January	156	336	8	3	15	26
February	140	391	7	6	9	22
March	136	399	13	15	11	39
April	105	724	8	9	5	22
May	94	1,223	9	24	7	40
June	117	1,215	19	15	1	35
July	184	2,778	21	65	9	95
August	126	640	20	26	9	55
September	87	747	13	25	2	40
October	98	812	10	24	5	39
November	82	634	9	6	5	20
December	57	729	9	23	2	34
Total	1,382	10,628	146	241	80	467

	Explosions	Shootings*	Deaths			
			Security Forces	Civilians	Terrorists	Total
1973						
January	57	678 (8)	5	11	1	17
February	73	695 (9)	10	16	11	37
March	104	799 (11)	16	11	3	30
April	65	477 (6)	7	5	4	16
May	104	369 (6)	13	12	5	30
June	110	303 (0)	4	22	4	30
July	67	283 (3)	6	8	2	16
August	79	239 (10)	3	14	4	21
September	64	266 (6)	2	6	2	10
October	79	298 (5)	4	4	0	8
November	118	312 (7)	4	12	4	20
December	58	299 (4)	5	6	3	14
Total	978	5,018 (75)	79	127	43	249
1974						
January	63	297 (8)	6	13	0	19
February	90	229 (19)	1	11	3	15
March	111	292 (8)	9	15	2	26
April	44	329 (15)	4	9	1	14
May	64	353 (8)	3	18	4	25
June	70	227 (10)	4	8	2	14
July	55	240 (16)	4	9	0	13
August	42	317 (13)	4	7	3	14
September	28	222 (11)	1	10	0	11
October	32	266 (6)	4	12	3	19
November	49	280 (8)	7	26	2	35
Total to 30th November	648	3,052 (122)	47	138	20	205

*The figures in brackets show the number of "kneecapping" incidents. (Separate figures are not available for 1971 and 1972).

PROCEDURE FOR COMMITTAL FOR TRIAL

1. Section 43(1) and (2) of the Magistrates' Courts Act (Northern Ireland) 1964 reads:

"(1) A magistrates' court which adjourns a preliminary investigation of an indictable offence and remands the accused in custody may, if satisfied that it is desirable in the interests of justice or security to do so and that the accused would not thereby suffer hardship, order that the adjourned investigation shall be held at a time and place specified in the order being a place within the same petty sessions district as the prison to which the person charged is remanded.

(2) A magistrates' court before whom any adjourned investigation is held, i satisfied as aforesaid, may, without prejudice to any other power exercisable by it, order that such investigation shall be adjourned to—

- (a) a place within the same petty sessions district as that in which the investigation was begun; or
- (b) a place within the same petty sessions district as the prison to which the person charged is further remanded."

2. Practical problems in the operation of this section must be viewed in the light of existing legislation which confers jurisdiction on a magistrates' court to commit a defendant for trial. Such jurisdiction is conferred under the following two enactments:

(a) Section 7(1) of the Criminal Justice Act (Northern Ireland) 1945 provides that:

"7.—(1) A person charged with the commission in Northern Ireland of any indictable offence or with the commission of an indictable offence cognisable under the law of Northern Ireland may be proceeded against, indicted, tried and punished in any county or place in which he was apprehended, or is in custody on a charge for the offence or has appeared in answer to a summons lawfully issued charging the offence, as if the offence had been committed in that county or place, and the offence shall, for all purposes incidental to or consequential on the prosecution, trial or punishment thereof, be deemed to have been committed in that county or place:"

(b) Section 31(1) of the Magistrates' Courts Act (Northern Ireland) 1964 provides that:

"31.—(1) Subject to the provisions of this Part, a magistrates' court for a county or county borough may conduct a preliminary investigation into an indictable offence or hear and determine a complaint charging a summary offence, if in any such case—

- (a) the offence was committed in the county or county borough; or
- (b) the offence was committed elsewhere than in the county or county borough and the defendant is, or is resident (or in the case of a body corporate has its registered office or principal place of business) within the county or county borough; or
- (c) it appears necessary or expedient with a view to the better administration of justice that the person charged with the offence should be tried or jointly tried with, or in the same place as, some other person who is charged with an offence and who is in custody or is being or is to be proceeded against within that county or county borough; or
- (d) the court under this or any other enactment or otherwise has jurisdiction to deal with the offence."

3. A court, having jurisdiction pursuant to any of the above provisions in respect of a defendant, may make an order under section 43(1) of the Magistrates' Courts Act that an adjourned investigation be held in the same petty sessions district as the prison to which that person is remanded. In the case of a male defendant this would usually be Belfast and in the case of a female defendant, Armagh.

4. Difficulties have, however, arisen where it is later sought to adjourn such proceedings to an appropriate court for the taking of depositions or conducting a preliminary enquiry since the court in the petty sessions district within which the prison is located is limited, so far as the order of adjournment it is empowered to make, by the provisions of section 43(2), as we have seen above, to

- "(a) a place within the same petty sessions district as that in which the investigation was begun; or
- (b) a place within the same petty sessions district as the prison to which the person charged is further remanded."

5. This situation gives rise to difficulties of two kinds of which the following are illustrations:

- (a) *Firstly*, a man is alleged to have committed an offence in place A but he is apprehended and brought before a court at place B which is empowered to exercise jurisdiction by virtue of section 7(1) of the Criminal Justice Act (Northern Ireland) 1945 or section 31(1) of the Magistrates' Courts Act (Northern Ireland) 1964. That court adjourns proceedings to Belfast pursuant to section 43(1) of the latter Act, that being in the same petty sessions district as the prison to which he is remanded.

The natural and convenient venue for the taking of depositions may well be place A since it is there that the witnesses are likely to be located. Under present legislation however Belfast Petty Sessions has no jurisdiction to adjourn the proceedings to the court at place A in view of its very restricted powers under section 43(2).

- (b) *Secondly*, both men and women are apprehended in connection with the commission of a certain crime. The court before which they initially appear (at place A) exercises its powers under section 43(1) and the defendants thereafter appear on remand at courts at Belfast and Armagh respectively.

For security reasons, perhaps to obviate the possibility of civil disorder if the defendants are remanded back to the court at place A, it is desired that the committal proceedings be held in Belfast. The court at Armagh has at present no jurisdiction to remand the female prisoners to Belfast under section 43(2).

6. These difficulties could be met if section 43(2) of the Magistrates' Courts Act (Northern Ireland) 1964 were amended by the addition, at the end of the present subsection, of the words—

"or

- (c) in the case of an indictable scheduled offence a magistrates' court having jurisdiction to conduct a preliminary investigation or a preliminary enquiry into such an offence."

We recommend accordingly.

DISORDERLY CONDUCT IN COURT

1. Subsection (3) of section 42 of the Magistrates' Courts Act (Northern Ireland) 1964, provides that:

"The written depositions of witnesses and other evidence at a preliminary investigation shall be given or taken in the presence of the accused; and the accused shall be at liberty to cross-examine any witness for the prosecution."

The effect of this provision is that if, due to the disorderly conduct of a defendant or defendants in the face of the court committal proceedings cannot effectively continue, the court is precluded from having them removed and continuing the proceedings in their absence.

2. Section 45 of the Criminal Justice Act 1972 (an Act which does not extend to Northern Ireland) provides *inter alia*—

"... examining justices may allow evidence to be given before them in the absence of the accused if—

(a) they consider that by reason of his disorderly conduct before them it is not practicable for the evidence to be given in his presence . . ."

3. While the lack of powers contained in section 45 of the Act of 1972 has not produced, so far, much serious difficulty in Northern Ireland, we think it would be wise to forestall the effects of disorderly conduct and to apply paragraph (a) of section 45 to preliminary investigations or enquiries before magistrates' courts in Northern Ireland.

TABLE 1

PRISON POPULATION 1st January 1968-30th November 1974

	Armagh			Belfast	Magilligan	Maze	Woburn	Castledillon	Maidstone	Total
	Females	Males	Borstal							
1. 1.68	11	—	43	601			72			727
1. 1.69	8	—	45	589			70			712
1. 1.70	10	—	23	661			69			763
1. 1.71	14	101	—	677			106	46		944
1. 1.72	23	128	—	784	39	527	94		157	1,752
1. 1.73	28	—	40	589	114	758	44			1,573
1. 1.74	69	—	42	557	145	1,502	44			2,359
30.11.74	109	—	37	767	589	1,292	54			2,848

TABLE 2
PRISON POPULATION AT 30th NOVEMBER 1974

	Armagh	Belfast	Magilligan	Maze	Woburn	Total
Detainees (including ICO's)	22 (F)	—	—	513	—	535
Special Category	53 (F)	9	468 ⁽⁴⁾	589 ⁽⁵⁾	—	1,119
Long Term	3 (F)	158	—	—	—	161
Short Term	4 (F)	186	89	11	—	290
Young Prisoners 17-21 years on conviction	—	2	32	86	—	120
Borstal Boys	37 ⁽¹⁾	—	—	—	54	91
Remand	14 (F)	329	—	17	—	360
Awaiting Trial	10 (F)	82	—	76	—	168
Others	3 (F) ⁽²⁾	1 ⁽³⁾	—	—	—	4
Total	146	767	589	1,292	54	2,848

(F) Female.

(1) Includes 8 persons detained under section 73(2) of the Children and Young Persons Act (NI) 1968.

(2) Two Borstal girls held pending appeal:

One detained under section 73(2) of the Children and Young Persons Act (NI) 1968.

(3) One detained under section 73(2) of the Children and Young Persons Act (NI) 1968.

(4) One person still subject to detention order.

(5) Four persons still subject to detention orders.

DETENTION STATISTICS

TABLE 1

RELEASES FROM DETENTION: 1st July 1973-30th November 1974

	Executive releases before first hearing	First hearing	Appeal	Review	Executive	Total
1973						
July	0	2	0	0	0	2
August	1	5	2	2	1	11
September	0	5	2	0	0	7
October	0	11	0	6	0	17
November	0	8	1	10	1	20
December	0	10	0	8	65	83
1974						
January	2	7	1	15	0	25
February	1	8	0	10	0	19
March	0	7	0	16	1	24
April	0	11	0	5	1	17
May	0	8	3	16	1	28
June	8	10	2	21	2	43
July	0	12	0	21	18	51
August	0	12	0	16	8	36
September	3	13	3	10	16	45
October	3	9	2	2	11	27
November	3	6	1	0	8	18
Total	21	144	17	158	133	473

TABLE 2

INTERIM CUSTODY ORDERS (I.C.O.s)
RELEASES AND TOTAL POPULATION OF DETAINEES:
1st July 1973-30th November 1974

	ICOs	All Releases	Net Increase/ decrease in month	Total detained ICOs and DOs
1973				
June				535
July	57	2	+ 55	590
August	33	11	+ 22	612
September	35	7 (+ 2 escapes)	+ 26	638
October	37	17	+ 20	658
November	31	20	+ 11	669
December	9	83 (+ 1 escape)	- 75	594
1974				
January	15	25 (+ 1 escape)	- 11	583
February	18 (+ 1 recapture)	19	0	583
March	24	24 (+ 1 escape)	- 1	582
April	64	17	+ 47	629
May	46	28	+ 18	647
June	28	43	- 15	632
July	11	51 (+ 1 death) (+ 2 escapes)	- 43	589
August	23	36 (+ 1 escape)	- 14	575
September	9	45	- 36	539
October	21 (+ 2 recaptures)	27	- 4	535
November	23 (+ 1 recapture)	18 (+ 1 death)	+ 4	540
Total	484 (+ 4 recaptures)	473 (+ 2 deaths) (+ 8 escapes)	+ 5	540

DRAFT SCHEDULE

DETENTION AND RELEASE OF TERRORISTS—pursuant to SECTION 10 (6)**Detention Advisory Board and Release Advisory Committee****PART I. Detention Advisory Board**

1. For the purposes of this Act there shall be a Detention Advisory Board (hereafter in this Schedule referred to as "the Board") whose members shall be appointed by the Secretary of State.

2. There shall be such number of members of the Board not exceeding seven as the Secretary of State may determine and the Secretary of State shall appoint one of them to be chairman.

3. A member of the Board shall be a person who holds full-time judicial office in England, Wales or Scotland.

4. (1) A member of the Board shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

(2) A member of the Board may at any time by notice in writing to the Secretary of State resign his office.

(3) The members of the Board shall be paid such allowances as the Secretary of State may determine.

(4) The Board shall sit in Divisions of three members.

5. The Secretary of State shall appoint officers and servants for the Board.

PART 2. Provisional and Confirmed Custody Orders

6. (1) Where the Secretary of State suspects that a person is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising, recruiting or training persons for the purpose of terrorism and considers that the person's freedom in the community would seriously endanger the general security of the public, the Secretary of State may make a provisional custody order for the temporary detention of that person.

(2) The Secretary of State shall personally sign the provisional custody order and annex it to a certificate signed by him setting out the suspicions and considerations upon which he made the order.

(3) The Secretary of State shall upon making the provisional custody order forthwith refer the case of the person concerned (hereafter in this Schedule referred to as "the detainee") to the Board.

7. Upon such reference the Board consisting of three members shall enquire into the case for the purposes of—

(a) deciding whether or not they are satisfied that—

(i) the detainee is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising, recruiting or training persons for the purposes of terrorism;

AND

(ii) his release would seriously endanger the general security of the public.

(b) advising the Secretary of State of their decision and making recommendations to him as to whether the detainee should be released or further detained.

8. (1) Not more than seven days after the making of the provisional custody order the detainee shall be served by or on behalf of the Secretary of State with a statement in writing as to the nature of the terrorist activities which are the subject of enquiry by the Board.

(2) Within three days of receipt of the notice aforesaid the detainee may make representations in writing to the Secretary of State setting out the grounds upon which he disputes the making of the provisional custody order and any matter set out in the notice aforesaid.

(3) Upon receipt of any representation in writing as prescribed in (2) above the Secretary of State shall forthwith refer it to the Board who shall consider it.

(4) Within three days of receipt of the notice aforesaid the detainee may also apply to the Secretary of State to make oral representations to the Board who shall give the detainee opportunity to do so.

9. The enquiry by the Board shall take place in private.

10. During the enquiry the Board shall be entitled:

- (a) to receive oral, documentary or other evidence, notwithstanding that the evidence would be inadmissible in a court of law;
- (b) to question any person including the detainee; during such questioning no person shall be present other than members of the Board;
- (c) to cause enquiries to be made in relation to any matter; the Crown shall be under an obligation to give every assistance to such enquiries as is required.

11. The Board may require any persons to give evidence on oath or by affirmation and for that purpose an oath or affirmation in due form may be administered.

12. (1) The Board may:

- (a) by summonses in writing require any person to attend as a witness at such time and place as may be specified in the summons; and
- (b) require any person to answer any question or produce any documents in his custody or under his control which relate to any matters in the enquiry;

but a person shall not be required by a summons to go more than 10 miles from his place of residence unless the necessary expenses of his attendance are paid or tendered to him.

(2) A person who without reasonable excuse fails to comply with a summons or requirement under sub-paragraph (1) above shall be liable on summary conviction to a fine not exceeding £200 or to imprisonment for a term not exceeding six months or both.

13. The Board may order the payment to any person of such sums as appear to the Board to be reasonable in respect of costs or expenses incurred by that person in connection with the enquiry.

14. (1) The Board shall conclude their enquiry and send a written report to the Secretary of State advising him of their decision with the reasons therefore and making recommendations to him with the reasons therefore as to whether the detainee should be released or further detained.

(2) Such written report shall be sent to the Secretary of State within 28 days of the making of the provisional custody order.

15. The Board shall recommend to the Secretary of State that an *ex gratia* payment be made to a detainee if the Board are satisfied that the allegations against him were without foundation.

16. Within seven days of receipt of the written report of the Board or within 35 days of the making of the provisional custody order whichever period be the less the Secretary of State may either:

- (a) direct the release of the detainee; or
- (b) after consideration of the Board's written report and any representation made by the detainee under paragraph 8(2) above make a confirmed custody order if the Board has recommended the detainee's further detention; or
- (c) after consideration of the Board's written report, and despite its recommendation that the detainee should be released, and after consideration of any representation made by the detainee under paragraph 8(2) above, make a confirmed custody order.

17. (1) A confirmed custody order shall be signed by the Secretary of State and if made pursuant to paragraph 16(c) above, shall set out the nature of the reasons why the Secretary of State has not accepted the recommendation of the Board.

(2) A copy of the confirmed custody order in appropriate form shall be sent to the detainee and the Board.

18. No time limit prescribed by this part of the Schedule shall be extended.

PART 3. Release Advisory Committee

19. For the purpose of this Act there shall be a Release Advisory Committee (hereafter in this Schedule referred to as "the Committee") whose members shall be appointed by the Secretary of State.

20. (1) A member of the Committee shall hold and vacate his office in accordance with the terms of his appointment and shall on ceasing to hold office, be eligible for reappointment.

(2) A member of the Committee may at any time by notice in writing to the Secretary of State resign his office.

(3) The members of the Committee shall be paid such allowances as the Secretary of State may determine.

21. The Secretary of State may appoint officers and servants to the Committee.

22. (1) The Secretary of State may at any time refer for advice to the Committee the case of any person who is for the time being detained under a confirmed custody order and shall so refer the case of each such person annually.

(2) Upon such reference the Committee shall consider the case of the person; make such enquiries as they think fit and advise the Secretary of State in writing whether in their opinion the person shall be released or remain in detention.

(3) The Secretary of State shall consider all advice tendered to him by the Committee when deciding whether a detainee be released or remain in detention.

(4) The Secretary of State shall consider the case of each detainee annually in the light of advice (if any) submitted to him by the Committee and decide whether such detainee should be released or remain in detention.

23. (1) The Secretary of State may direct the discharge at any time of a person detained under a provisional or confirmed custody order.

(2) The Secretary of State may direct the release, subject to such conditions (if any) as he may specify, of a person detained under a confirmed custody order.

(3) The Secretary of State may recall to detention a person released subject to conditions under sub-paragraph (2) above, and a person so recalled may be detained under the original confirmed custody order.

PART 4. Supplemental

24. (1) A person required to be detained under a provisional custody order or a confirmed custody order may be detained in a prison or in some other place approved for the purposes of this paragraph by the Secretary of State but so far as is practicable such prison or other approved places should not contain convicted prisoners or prisoners detained in prison on remand.

(2) So far as is reasonably practicable persons detained under provisional custody orders should be kept apart from persons detained under confirmed custody orders.

(3) A person for the time being having custody of a person required to be detained as aforesaid shall have all the powers, authorities, protection and privileges of a constable.

(4) Subject to any directions of the Secretary of State a person detained as aforesaid shall be treated as nearly as may be as if he were a prisoner detained in a prison on remand and any power of temporary removal for judicial, medical or other purposes shall apply accordingly.

(5) If any person who is detained under a provisional or confirmed custody order escapes he may be arrested without warrant by any constable or any member of Her Majesty's forces on duty.

25. Any person who:

- (a) being detained under a provisional custody order or confirmed custody order escapes;
- (b) rescues any person detained as aforesaid or assists a person so detained in escaping or attempting to escape; or
- (c) knowingly harbours any person required to be detained under a provisional custody order or confirmed custody order or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody,

shall be liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine or to both.

A RESETTLEMENT SCHEME FOR DETAINEES

1. The object of the scheme set out below is to assist detainees in the transition to outside life. Some of them have been living in close confinement for over three years. All have been living in conditions which, though physically adequate (at least before the October riots) are profoundly alienating. Many of the detainees are likely to be socially disorientated on release, and to have difficulty in picking up the threads of normal living, particularly if they return to families under stress.

2. Some of the evidence we have received from representatives of the penal services and the social services suggests that there is no necessity for a special scheme. We have been told that ex-detainees can help themselves—all they want is to get out of detention. We have been assured that they can make use of the ordinary social services, and that the general public might well react adversely to a scheme which gave men who are thought to have committed very violent acts conditions substantially better than those available to the rest of the community. It has been suggested to us that a special scheme might involve an element of stigmatisation; that the men themselves would not be likely to accept it; and that even if they did, it would not make them amenable to the rule of law.

3. Whilst these points have some substance, we do not think that they add up to a convincing case for doing nothing. It is very likely that detainees focus their hopes on the possibility of release, and think that they can fend for themselves; but it is also likely that many of them are incapable of making realistic plans for life after release—the only reality is that of life behind barbed wire, and the hope of a glorious and dramatic moment when the gates of the Maze finally open. The prisoner-of-war mentality is not conducive to planning for a socially precarious future. Their expectation of what the social services will do to help them is probably very low. It is a reasonable argument that they should return to the same conditions as the rest of the population; but in Northern Ireland where there is a high level of unemployment in some areas, a severe housing shortage and the social services are stretched to capacity, that does not offer them a great deal. They may in any case need special assistance in making use of what is available, and in gaining access to the forms of help which voluntary and statutory provision can offer. There is no reason why such assistance should involve stigmatisation if it is properly organised and humanely administered. After release, ex-detainees can make use of it or not, as they choose. There is no guarantee that they will do so, or that it will make them more amenable; but the social and economic costs of allowing them to remain embittered run so high that it is at least worth trying an alternative.

4. The present system of release from the Maze (we have not investigated the position of the women detainees at Armagh) operates as follows: releases usually take place in the evening. Once a release order is signed, whether for executive release by the Secretary of State or for release by the Commissioners, there is no power to hold the detainee further. He is told to collect his possessions, and immediately taken out of the compound. He has a bath, and is given clothes if he needs them. He is not given any money. He may be given a 'bus warrant, or a telephone call may be made to arrange for him to be collected. In either case, the responsibility of the public services ends at the gates of the Maze. Within an hour or little more from first notification, the ex-detainee is on his own. There is no statutory provision for after-care. The Northern Ireland Probation Service does not work with either detainees or special category prisoners.

5. This provision is less than that available in Northern Ireland for convicted prisoners. Convicted prisoners know in advance the date of their release, so that they are able to plan ahead. In many cases, they have home leave before their final release date. Releases takes place early in the morning, and prisoners are given a grant of £4 on release. In England, the provision is better still. It is the practice

of most prisons to arrange for a representative of the Employment Service to visit the prison and make preliminary arrangements for a job. Some run quite intensive pre-release courses for groups of prisoners, in which they are advised about such matters as social security entitlement, the law relating to landlord and tenant, hire purchase and debt. The grant is £7.60 for a man returning to an established home, and £13.90 for a man without a fixed address, which enables him to find lodgings and deposit a sum for his board. The Probation Service often keeps contact with men during their period of imprisonment, and makes arrangements for after-care. It is reasonable to argue that detainees should not receive less in the way of assistance than convicted prisoners in Northern Ireland, and that the position of either group should not be less eligible than that of convicted prisoners in England, since Northern Ireland is part of the United Kingdom. The fact that detainees are discharged at very short notice after an indeterminate period of confinement suggests that they are a particularly disadvantaged group.

6. Plans for a more satisfactory release process for detainees have been discussed by Government, but have so far been frustrated by events. Plans for pre-release work by the Prison Welfare staff at the Maze have not advanced very far, because of limitations of staff and accommodation. Since the burning down of the Maze, there is unlikely to be accommodation for such work for some time, and the prevailing atmosphere of violence and hostility is hardly conducive to co-operation between staff and prisoners. In recent months a small independent Resettlement Association has been formed in Belfast with a staff of five. This body has started liaison work with community associations and other voluntary bodies for ex-detainees willing to seek its assistance; but attempts by the staff to talk to detainees now in the Maze have recently been frustrated by the compound leaders, who insist that all communication must be made through them.

7. We propose two new agencies: a pre-release centre which would represent a final stage in the detention system, and a post-release organisation to be run independently.

8. **A pre-release centre.** The procedure of the Release Advisory Committee would eliminate the current problem of an obligation to release the detainee immediately, since attendance at a pre-release centre could be made a condition of discharge. We think that it is not practicable to mount an effective pre-release programme in the Maze (though any work which the Prison Welfare staff can do will be helpful as preparation) because of the lack of suitable accommodation, the problems of security imposed by additional visitors, and the associations which the Maze possesses for detainees. We therefore propose a "half-way house" or resettlement centre outside the Maze, and preferably in another district, on the following lines:—

- (a) The centre would be a house with accommodation for perhaps a dozen people at any one time (six detainees and a small staff). This assumes approximately the present release rate of about 50 men per month. If the release rate is higher, two or more centres would be necessary.
- (b) Conditions should not be luxurious, but should be reasonably comfortable, and as informal as possible. There should be a telephone for the use of the detainees, television, newspapers and minor forms of recreation. Everything should be done to make it homelike, and to provide a sharp contrast to the bleak atmosphere of the compounds at the Maze. The operation of the Norwich System in some British prisons and of some experimental units in open prisons might provide models.
- (c) The centre would have to be made acceptable to the detainees. It would probably not be advisable to hold them for much more than 36 hours—men coming out of enforced custody are in a hurry to get home, and may be inclined to resent release procedures designed for their assistance. A comfortable centre with a helpful and unaggressive staff and offering personal assistance could receive men in the evening, give them a full day's intensive programme and arrange release on the following morning. Most of the detainees, for reasons of personal security, would probably prefer to go home in the morning rather than at night.

- (d) The programme would operate two or three times a week, as necessary, for small groups of 4-6 men. This would provide groups large enough to give the men some sense of support, but not large enough to create trouble. There could be some informal small-group discussion, but care would have to be taken to limit it to severely practical aspects of resettlement, and to avoid any political controversy.
- (e) The following elements would be included in the programme:—
- (i) A medical examination whose purpose would be to assess the physical condition of the detainee for employment, and to make any necessary arrangements for medical treatment after release, either through a hospital or through a general practitioner.
 - (ii) Advice on social security entitlement. This could be given either by a Social Security official or by a member of a voluntary organisation (e.g. the Citizens' Advice Bureau). The advantage of the first is that the procedure of claiming benefit might be commenced at this stage—the necessary forms could be completed, and there should be no delay. The advantage of the second is that it would involve a more personal service from a voluntary organisation, focused on questions of eligibility. (See note on social security in paragraph 10 below.)
 - (iii) Advice on employment or industrial training from the Department of Manpower Services. We understand that there is no shortage of vacancies in Industrial Training Units at least in the Belfast area. Moreover, grants are in certain circumstances payable through the Development Advice Centre to people prepared to move from the Belfast Urban area to the development centres of Antrim, Ballymena and Craigavon. In addition the Department of Manpower Services operates a generous scheme whereby assistance may be given to unemployed workers moving on a temporary or permanent basis to employment in another part of Northern Ireland or Great Britain. The assistance offered includes: in the case of temporary transfers a lodging allowance, a commuting allowance and fares for visits home; and in the case of permanent transfers household removal expenses, a mobility grant and a proportion of legal fees incurred in sale and purchase of a house. At present application is restricted to certain categories of the unemployed. It might be extended to apply to detainees who have other reasons for wishing to move to a new district.
 - (iv) New clothing of a reasonable quality if required and acceptable (not a standard issue).
 - (v) An immediate *ex gratia* payment. This should not be large enough to induce irresponsible spending, but should be sufficient to tide the ex-detainee and his family over the first few days after release—perhaps £25. It should not be deductible from social security payments which is the practice with prison grants.
 - (vi) An opportunity to talk to a social worker or a priest or minister who would help to make a coherent and individual plan for resettlement.
 - (vii) A brochure, written in an informal and non-bureaucratic style, setting out the sources of outside assistance.
 - (viii) The programme would conclude with arrangements for transport initiated by the centre. A voluntary car pool might be the most suitable arrangement.
- (f) The staffing of such a centre would be vital to its success. An operational staff of two, supplemented by cooks and cleaners, might be enough; but the two would have to be people of very high calibre, with the knowledge to understand the social dynamics of a brief but potentially very significant experience for the detainees, and the personal ability to make good relationships with alienated people. They should preferably be of Northern Ireland origin.

9. **Long-term resettlement.** This must be left primarily in the hands of the existing voluntary and statutory social services; but the services are very limited in what they have to offer, and depression or disillusion will soon set in if what has appeared to be available does not in fact materialise. Ex-detainees will move at their own pace after release; but the ability to offer help speedily if required is important. The Resettlement Association, while offering a useful channel of help in a non-official form, is operating on a small scale, and has no funds of its own for grants. We think there is a need for another and parallel kind of organisation, which could make substantial grants to families whose cases do not fit the requirements of the statutory services, or who need immediate and rather unorthodox kinds of help. A model might be found in the operation of the Family Fund, a fund set up in 1973 by the British Department of Health and Social Security and administered by a charitable trust. This was a new departure in social policy, since it enabled payments to be made directly and speedily to families in special categories of need for purposes not covered by the existing social services; but since each case is investigated before a grant is made, and the statutory services are consulted, it has also had the effect of maximising the contribution of the statutory services for this group of families. It is possible that a major charitable trust might be willing to consider a similar scheme for ex-detainees and their families as a contribution to peace and stability in Northern Ireland.

10. **A note on Social Security.** At present, detainees are credited with Class II or Class III social security contributions during their period of detention—sufficient to safeguard their pension rights, but not to give them a right to unemployment benefit, sick benefit or maternity benefit on release. Since the “benefit year” commences six months after the end of the “contribution year”, it may be 18 months after release before they are in benefit again, even if they return immediately to employment. Those who do not can claim supplementary benefit; but we have heard in evidence that this is often not received for five weeks or more after release. The Supplementary Benefits Commission states that there is no reason for such delay unless the men themselves delay in applying. Our proposals for an *ex gratia* payment on release and advice on entitlement during the pre-release programme would provide for immediate needs; but since detainees cannot earn money during their detention, and have not been convicted of an offence, we think there is a case for more generous treatment in terms of social security. Detainees in employment at the time when the interim custody order is made should have credit for Class I contributions during their period of detention on the same basis as that now operating for hospital patients.

11. It does not appear to be technically possible to safeguard redundancy payments or earnings-related benefit. Redundancy payments are applicable if an employer implements a redundancy scheme and workers of more than two years' standing are rendered unemployed. It has been suggested to us that detainees should receive redundancy payments if such a scheme is implemented in their former place of work while they are detained; but this would be very difficult to operate. Earnings-related benefit necessarily varies with the amount actually earned, and there are objections to paying differential contributions for men in detention on the grounds that their wages were differentiated when they were in employment. We think that the arrangements for financial assistance and the finding of employment outlined above should be sufficient to provide for the small number of cases in which there is a degree of special hardship on these grounds.

12. Summary.

- (i) A resettlement policy for ex-detainees should make some special provision for their needs. Any other approach is likely to be counter-productive.
- (ii) A “half-way house” should be established outside the Maze to run a short but intensive pre-release programme.
- (iii) The possibility of establishing a fund for ex-detainees and their families to be administered by a major non-governmental organisation should be explored.
- (iv) Detainees should receive an *ex gratia* payment on discharge, and should be credited with full insurance contributions during their period of detention.

13. To implement such a scheme half-heartedly or in a bureaucratic manner, would be worse than not implementing it at all. To implement it with generosity and humanity would require some positive and enlightened social thinking, and may meet with opposition on moralistic grounds. However, without entering into arguments about whether the detainees are "deserving" or "undeserving", we think that the scheme can be justified in purely pragmatic terms. The costs would be small when set against the benefits of neutralising some of the anger and violence which the system of detention has generated. The benefits in public relations, both inside Northern Ireland and abroad, would be considerable.



Northern Ireland (Emergency Provisions) (Amendment) Act 1975

CHAPTER 62

ARRANGEMENT OF SECTIONS

Trial of certain offences, etc.

Section

1. Admissibility of written statements made outside Northern Ireland.
2. Preliminary enquiry into scheduled offences.
3. Trial of scheduled and non-scheduled offences together.
4. Removal of certain limitations on power to grant bail.
5. Legal aid to applicants for bail.
6. Court of trial for scheduled offences.
7. Repeal of s. 5 of principal Act.
8. Exclusion of summary proceedings from ss. 6 and 7 of principal Act.

Powers of detention, search, seizure, etc.

9. Detention of terrorists, etc.
10. Power to stop and question.
11. Power to search for radio transmitters.

Offences against public security and public order

12. Invitations to join, or carry out directions given by, proscribed organisation.
13. Extension of classes of information in s. 20 of principal Act.
14. Riotous and disorderly behaviour.
15. Training in making or use of firearms, explosives or explosive substances.
16. Wearing of hoods, etc. in public places.

*Northern Ireland (Emergency
Provisions) (Amendment) Act 1975*

Miscellaneous and general

Section

17. Prosecutions.
18. Amendments to list of scheduled offences.
19. Expenses.
20. Interpretation, etc.
21. Commencement, duration, expiry and revival of certain provisions.
22. Consequential amendments.
23. Short title, repeals and extent.

SCHEDULES:

- Schedule 1—Detention of terrorists.
- Schedule 2—Amendments of Part I of Schedule 4 to the principal Act.
- Schedule 3—Enactments repealed.

ELIZABETH II

c. 62



Northern Ireland (Emergency Provisions) (Amendment) Act 1975

1975 CHAPTER 62

An Act to amend the Northern Ireland (Emergency Provisions) Act 1973; to make further provision with respect to criminal proceedings, the maintenance of order and the detection of crime in Northern Ireland; to provide for the detention of terrorists there; and for connected purposes. [7th August 1975]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Trial of certain offences, etc.

1.—(1) Section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (admissibility of written statements in criminal proceedings other than preliminary investigations and preliminary enquiries), section 3 of the Criminal Procedure (Committal for Trial) Act (Northern Ireland) 1968 (admissibility of written statements in preliminary enquiries) and sections 1A and 1B of the Perjury Act (Northern Ireland) 1946 (penalties for the making of false statements which are tendered in evidence under either the said section 1 or 3) shall apply to written statements made in Great Britain as well as to written statements made in Northern Ireland. Admissibility of written statements made outside Northern Ireland. 1968 c. 28 (N.I.). 1968 c. 32 (N.I.). 1946 c. 13 (N.I.).

(2) The said section 3 shall apply also to written statements made outside the United Kingdom and (after the commencement of section 9 of the Criminal Jurisdiction Act 1975) the Republic of Ireland, but, in relation to such statements, that section shall have effect with the omission of subsection (2)(c). 1975 c. 59.

2

c. 62

Northern Ireland (Emergency Provisions) (Amendment) Act 1975

Preliminary enquiry into scheduled offences.

1975 c. 59.

1968 c. 32

(N.I.).

1964 c. 21

(N.I.).

2.—(1) Where in any proceedings before a magistrates' court for a scheduled offence (not being an extra-territorial offence as defined in section 1(3) of the Criminal Jurisdiction Act 1975) the prosecutor requests the court to conduct a preliminary enquiry into the offence under the Criminal Procedure (Committal for Trial) Act (Northern Ireland) 1968, the court shall, notwithstanding anything in section 1 of that Act of 1968, conduct a preliminary enquiry into the offence unless the court are of opinion that in the interests of justice a preliminary investigation should be conducted into the offence under Part VI of the Magistrates' Courts Act (Northern Ireland) 1964.

(2) Where in any proceedings a person charged with a scheduled offence is also charged with another offence which is not a scheduled offence, that other offence shall be treated as a scheduled offence for the purposes of subsection (1) above.

Trial of scheduled and non-scheduled offences together.

1973 c. 53.

3.—(1) For subsection (3) of section 2 of the Northern Ireland (Emergency Provisions) Act 1973 (in this Act referred to as "the principal Act") there shall be substituted the following subsection:—

"(3) Where separate counts of an indictment allege a scheduled offence and an offence which is not a scheduled offence, the trial on indictment shall, without prejudice to section 5 of the Indictments Act (Northern Ireland) 1945 (orders for amendment of indictment, separate trial and postponement of trial), be conducted as if all the offences alleged in the indictment were scheduled offences."

(2) In sections 4(2) and 6(1) of the principal Act after the words "scheduled offence" there shall be inserted the words "or two or more offences which are or include scheduled offences."

Removal of certain limitations on power to grant bail.

4.—(1) For subsection (1) of section 3 of the principal Act (persons charged with scheduled offences not to be admitted to bail except by a judge of the High Court and persons convicted of such offences not to be admitted to bail pending an appeal) there shall be substituted the following subsection:—

"(1) Subject to the provisions of this section, a person to whom this section applies and who is charged with a scheduled offence shall not be admitted to bail except—

(a) by a judge of the Supreme Court ; or

(b) by the judge of the court of trial, on adjourning the trial of a person so charged."

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(2) At the end of the said section 3 there shall be added the following subsection:—

“(6) This section does not apply to a person charged with a scheduled offence which is being tried summarily or which the Director of Public Prosecutions for Northern Ireland certifies is in his opinion suitable to be tried summarily.”

5.—(1) Where it appears to a judge of the Supreme Court—

Legal aid to applicants for bail.

(a) that a person charged with a scheduled offence intends to apply to be admitted to bail; and

(b) that it is desirable in the interests of justice that that person should have legal aid but that he has not sufficient means to enable him to obtain that aid,

the judge may assign to him a solicitor and counsel, or counsel only, in the application for bail.

(2) If on a question of granting a person free legal aid under this section there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.

(3) Sections 24, 27 and 32 of the Legal Aid and Advice Act 1965 c. 8 (Northern Ireland) 1965 (statements, payments, rules and stamp duty) shall apply in relation to legal aid under this section as they apply in relation to legal aid under Part II of that Act as if any legal aid under this section were given in pursuance of a defence certificate under section 21 of that Act. (N.I.).

6.—(1) Subject to subsection (3) below, in section 4 of the principal Act (Belfast City Commission and Belfast Recorder's Court to be the only courts of trial on indictment of scheduled offences) references to the Belfast Recorder's Court shall cease to have effect. Court of trial for scheduled offences.

(2) Accordingly—

(a) in section 30(5) of the principal Act for the words from “shall” onwards there shall be substituted the words “shall, if he was committed to a county court or to a court of assize other than the Belfast City Commission, be treated as having been committed to that Commission”;

(b) in paragraph 2(3) of Schedule 2 to the Criminal Jurisdiction Act 1975 for the words from “on that date” onwards there shall be substituted the words “on that date any committal for trial of the offence by a county court or by a court of assize other than the Belfast City Commission shall be treated as a committal to that Commission”. 1975 c. 59.

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(3) This section shall not apply to a trial on indictment where the accused was committed to the Belfast Recorder's Court before the commencement of this Act.

Repeal of s. 5
of principal
Act.

7. Section 5 of the principal Act (admissibility in certain circumstances in criminal proceedings for scheduled offences of written statements made and signed in the presence of a constable) shall cease to have effect and section 30(6) of that Act shall apply accordingly.

Exclusion
of summary
proceedings
from ss. 6 and
7 of principal
Act.

8. Section 6 of the principal Act (admissibility in criminal proceedings for scheduled offences of statements made by the accused) and section 7 of that Act (onus of proof in criminal proceedings for scheduled offences where the accused is charged with possession of a proscribed article) shall not apply to summary trials.

Powers of detention, search, seizure, etc.

Detention of
terrorists, etc.

9.—(1) Part I of Schedule 1 to this Act shall have effect with respect to the detention of terrorists and persons suspected of being terrorists.

(2) The transitional provisions set out in Part II of Schedule 1 to this Act shall have effect.

(3) Schedule 1 to the principal Act (detention of terrorists) shall cease to have effect.

Power to stop
and question.

10. At the end of section 16(1) of the principal Act (power to stop and question any person for the purpose of ascertaining certain matters) there shall be added the words "or of ascertaining any one or more of those matters".

Power to
search for
radio
transmitters.

11.—(1) Any member of Her Majesty's forces on duty or any constable may enter any premises or other place other than a dwelling-house for the purpose of ascertaining whether any apparatus for wireless telegraphy designed or adapted for emission, as opposed to reception (in this section referred to as a "transmitter") is at that place and may search the place for any transmitter with a view to exercising the powers conferred by subsection (4) below.

(2) Any member of Her Majesty's forces on duty authorised by a commissioned officer of those forces or any constable authorised by an officer of the Royal Ulster Constabulary not below the rank of chief inspector may enter any dwelling-house in which it is suspected that there is a transmitter and may search it for any transmitter with a view to exercising the said powers.

(3) Any member of Her Majesty's forces on duty or any constable may—

- (a) stop any person in any public place and, with a view to exercising the said powers, search him for the purpose of ascertaining whether he has any transmitter with him; and
- (b) with a view to exercising the said powers, search any person not in a public place whom he suspects of having a transmitter with him.

(4) A member of Her Majesty's forces or a constable authorised to search any premises or other place or any person may seize any transmitter found in the course of the search unless it appears to the person so authorised that the transmitter has been, is being and is likely to be used only lawfully and may retain it.

(5) Sections 18 and 25 of the principal Act (supplementary provisions as to powers of entry and search conferred by Part II and compensation) shall apply for the purposes of this section as they apply for the purposes of Part II of that Act, and that Act, respectively.

(6) In this section "transmitter" includes part of a transmitter and "wireless telegraphy" has the same meaning as in section 19(1) of the Wireless Telegraphy Act 1949.

1949 c. 54.

Offences against public security and public order

12. In section 19(1) of the principal Act (belonging to or soliciting or inviting financial support for a proscribed organisation) after paragraph (b) there shall be inserted the following paragraph:—

- Invitations to join, or carry out directions given by, proscribed organisation.
- "(c) solicits or invites any person to become a member of a proscribed organisation or to carry out on behalf of a proscribed organisation orders or directions given, or requests made, by a member of that organisation,".

13. For section 20(1) of the principal Act (unlawful collection, etc. of information) there shall be substituted the following subsection:—

- Extension of classes of information in s. 20 of principal Act.
- "(1) No person shall, without lawful authority or reasonable excuse (the proof of which lies on him)—

- (a) collect, record, publish, communicate or attempt to elicit any information with respect to any person to whom this paragraph applies which is of such a nature as is likely to be useful to terrorists;

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- (b) collect or record any information which is of such a nature as is likely to be useful to terrorists in planning or carrying out any act of violence ; or
- (c) have in his possession any record of or document containing any such information as is mentioned in paragraph (a) or (b) above ;

and if any person contravenes this section, he shall be liable—

- (i) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both ;
- (ii) on conviction on indictment to imprisonment for a term not exceeding five years or a fine, or both.

(1A) Subsection (1)(a) above applies to any of the following persons, that is to say—

- (a) any constable or member of Her Majesty's forces ;
- (b) any person holding judicial office ;
- (c) any officer of any court ; and
- (d) any person employed for the whole of his time in the prison service in Northern Ireland."

Riotous and disorderly behaviour.

1968 c. 28 (N.I.).

14. Section 22 of the principal Act (amendment of provisions relating to punishment for riotous, disorderly and indecent behaviour, etc.) shall cease to have effect ; and accordingly, section 9(1) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 shall have effect as originally enacted.

Training in making or use of firearms, explosives or explosive substances.

15.—(1) Subject to subsection (2) below, any person who instructs or trains another or receives instruction or training in the making or use of firearms, explosives or explosive substances shall be liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both ;
- (b) on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or both.

(2) In any prosecution for an offence under this section it shall be a defence for the person charged to prove that the instruction or training was given or received with lawful authority or for industrial, agricultural or sporting purposes only or otherwise with good reason.

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(3) The court by or before whom a person is convicted of an offence under this section may order the forfeiture of any thing which appears to the court to have been in his possession for purposes connected with the offence.

(4) Without prejudice to section 33 of the Interpretation 1889 c. 63. Act 1889 (offences under two or more laws), nothing in this section shall derogate from the operation of the Unlawful 1819 c. 1. Drilling Act 1819.

16. Any person who, without lawful authority or reasonable excuse (the proof of which lies on him), wears in a public place hoods, etc. in or in the curtilage of a dwelling-house (other than one in which he is residing) any hood, mask or other article whatsoever made, adapted or used for concealing the identity or features shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

Miscellaneous and general

17.—(1) A prosecution shall not be instituted in respect of Prosecutions. any offence under this Act except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(2) Article 7 of the Prosecution of Offences (Northern S.I. 1972/538 Ireland) Order 1972 shall apply in relation to any offence under (N.I. 1.). this Act as if subsection (1) above were a consent provision within the meaning of that Article.

18. Part I of Schedule 4 to the principal Act (scheduled Amendments to list of offences for the purposes of the Act) shall have effect subject to the amendments in Schedule 2 to this Act. scheduled offences.

19. There shall be paid out of money provided by Expenses. Parliament—

- (a) any expenses incurred by the Secretary of State for the purposes of this Act ;
- (b) any increase attributable to the provisions of this Act in the sums payable under any other Act out of money so provided.

20.—(1) In this Act “the principal Act” has the meaning Interpretation, assigned by section 3 above and any expression used in this Act etc. and in the principal Act shall have the same meaning in this Act as in that Act.

(2) Any reference in this Act, except so far as the context otherwise requires, to an enactment shall be construed as a reference to that enactment as amended, applied or extended by or under any other enactment, including this Act.

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1889 c. 63.

(3) It is hereby declared that, in applying section 38(1) of the Interpretation Act 1889 (effect of repeal and re-enactment) for the construction of references in this Act to other Acts, account is to be taken of repeal and re-enactment by a Measure of the Northern Ireland Assembly or an Order in Council.

Commence-
ment, duration,
expiry and
revival of
certain
provisions.

21.—(1) This Act shall come into force on the expiration of the period of two weeks beginning with the day on which it is passed.

(2) Sections 2, 5, 9, 11, 15 and 16 above and Schedule 1 to this Act shall expire with 24th January 1976 unless continued in force by an order under this section.

(3) The Secretary of State may by order contained in a statutory instrument provide—

(a) that all or any of the said provisions which are for the time being in force (including any in force by virtue of an order under this section) shall continue in force for a period not exceeding six months from the coming into operation of the order ;

(b) that all or any of the said provisions which are for the time being in force shall cease to be in force ; or

(c) that all or any of the said provisions which are not for the time being in force shall come into force again and remain in force for a period not exceeding six months from the coming into operation of the order.

(4) No order shall be made under this section unless—

(a) a draft of the order has been approved by resolution of each House of Parliament ; or

(b) it is declared in the order that it appears to the Secretary of State that by reason of urgency it is necessary to make the order without a draft having been so approved.

(5) Orders under this section (except an order of which a draft has been so approved) shall be laid before Parliament after being made and, if at the end of the period of 40 days (computed in accordance with section 7(1) of the Statutory Instruments Act 1946) after the day on which the Secretary of State made an order a resolution has not been passed by each House approving the order in question, the order shall then cease to have effect (but without prejudice to anything previously done or to the making of a new order).

1946 c. 36.

(6) On the expiry or cesser of any provision of this Act, section 38(2) of the Interpretation Act 1889 (effect of repeals) shall apply as if the provision had been repealed by another Act.

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22.—(1) Any reference in section 11 of the principal Act (constable's general power of arrest and seizure) to an offence under that Act shall be construed as including a reference to an offence under this Act. Consequential amendments.

(2) In section 29 of the principal Act, in subsection (1) for the words "Schedules 1 and 3" substitute "Schedule 3" and in subsections (3) and (4) for the words "either of the said Schedules" substitute "the said Schedule 3".

(3) In section 30(3)(a) and (c) of the principal Act and section 3(2)(a) and (c) of the Northern Ireland (Young Persons) Act 1974 c. 33. 1974 (extension and revival of certain provisions for period not exceeding one year) for the words "one year" substitute "six months".

23.—(1) This Act may be cited as the Northern Ireland (Emergency Provisions) (Amendment) Act 1975. Short title, repeals and extent.

(2) The enactments set out in Schedule 3 to this Act (which include enactments which were obsolete or unnecessary before the passing of this Act) are hereby repealed to the extent specified in column 3 of that Schedule.

(3) This Act shall extend to Northern Ireland only.

SCHEDULES

Section 9.

SCHEDULE 1

PART I

DETENTION OF TERRORISTS

Advisers

1. The Secretary of State shall for the purposes of this Act appoint such number of Advisers as he may determine to advise him on matters concerning the detention and release of terrorists.

2. An Adviser shall be a person who holds or has held judicial office in any part of the United Kingdom or is a barrister, advocate or solicitor, in each case of not less than ten years' standing in any part of the United Kingdom.

3.—(1) An Adviser shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

(2) An Adviser may at any time by notice in writing to the Secretary of State resign his office.

(3) The Secretary of State may pay to the Advisers such remuneration and allowances as he may determine.

Interim Custody Orders

4.—(1) Where it appears to the Secretary of State that there are grounds for suspecting that a person has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism, the Secretary of State may make an interim custody order for the temporary detention of that person.

(2) An interim custody order shall be signed by the Secretary of State or a Minister of State or Under Secretary of State.

5.—(1) The Secretary of State may, at any time before the expiration of the period of fourteen days following the date of an interim custody order, refer the case to an Adviser and, unless the case is so referred, the order shall cease to have effect at the expiration of that period.

(2) A reference to an Adviser under this paragraph shall be by notice in writing signed on behalf of the Secretary of State and a copy of the notice shall be sent to the person detained.

Reference to an Adviser

6.—(1) As soon as possible after a case is referred to an Adviser under paragraph 5 above, the person detained shall be served with a statement in writing as to the nature of the terrorist activities of which he is suspected.

(2) A person detained may, within seven days following the date on which he receives any such statement as is mentioned in sub-paragraph (1) above, send to the Secretary of State—

(a) written representations concerning his case ; and

(b) a written request that he be seen personally by an Adviser ;
and the Secretary of State shall send a copy of any such representations or request to the Adviser concerned.

(3) The Secretary of State may pay any reasonable costs or expenses incurred by a person detained in obtaining legal advice or legal assistance in connection with the preparation of any representations he may make concerning his case.

7.—(1) Where the case of a person detained under an interim custody order is referred to an Adviser, he shall consider it and report to the Secretary of State whether or not in his opinion—

(a) the person detained has been concerned in terrorist activities ;
and

(b) the detention of that person is necessary for the protection of the public.

(2) In considering any case referred to him an Adviser shall have regard to any information (whether oral or in writing) which is made available to, or obtained by, him and to any representations (whether oral or in writing) made by the person detained.

(3) No person shall be present during the consideration by an Adviser of the case of any person referred to him, except—

(a) any person who for the time being is being seen by the Adviser ;

(b) any assistant to the Adviser ; and

(c) any person who is present in the interests of security.

(4) The Secretary of State may, at the request of an Adviser, pay any reasonable expenses incurred by any person in connection with a reference to the Adviser.

Detention Orders

8.—(1) After receiving a report made by an Adviser under paragraph 7(1) above, the Secretary of State shall consider the case of the person to whom it relates and, if he is satisfied—

(a) that that person has been concerned in the commission or attempted commission of any act of terrorism, or in directing, organising or training persons for the purpose of terrorism ; and

(b) that the detention of that person is necessary for the protection of the public,

the Secretary of State may make a detention order for the detention of that person.

(2) If, on considering any case under sub-paragraph (1) above, the Secretary of State is not satisfied as mentioned in that sub-paragraph, he shall direct the release of the person concerned.

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(3) Subject to sub-paragraphs (4) and (5) below, where—

- (a) a person is detained under an interim custody order; and
- (b) a detention order is not made in respect of that person within the period of seven weeks following the date of the interim custody order,

the interim custody order shall cease to have effect.

(4) The Secretary of State may, where a person is required to be detained under an interim custody order, give a direction in writing extending the period of seven weeks mentioned in sub-paragraph (3) above (or that period as extended under this sub-paragraph) for a further period of one week if it is stated in the direction that the report of the Adviser in relation to that person's case has not been received before the sixth day immediately preceding the day on which the interim custody order would, but for the direction, cease to have effect.

(5) Not more than three directions under sub-paragraph (4) above shall be given in respect of any one interim custody order.

(6) A detention order shall be signed by the Secretary of State, and a direction under sub-paragraph (4) above shall be signed by the Secretary of State or a Minister of State or Under Secretary of State.

Supplemental

9.—(1) The Secretary of State may at any time refer the case of a person detained under a detention order to an Adviser and, if so requested in writing in accordance with sub-paragraph (2) below by a person so detained, shall do so within fourteen days beginning with the receipt of the request.

(2) A person detained under a detention order shall not be entitled to make a request for the purposes of sub-paragraph (1) above—

- (a) before the expiration of the period of one year beginning with the date of the detention order, or
- (b) within a period of six months from the date of the last notification under sub-paragraph (5) below.

(3) On any reference under this paragraph, an Adviser shall consider the case and report to the Secretary of State whether or not the person's continued detention is necessary for the protection of the public.

(4) Paragraphs 6(3) and 7(2) to (4) above shall apply for the purposes of a reference under this paragraph as they apply for the purposes of a reference under paragraph 5 above.

(5) Where a case is referred to an Adviser in consequence of a request made in accordance with this paragraph, the Secretary of State shall, after receiving the report of the Adviser, reconsider the case of the person to whom it relates and, if he decides not to release that person, shall notify him of his decision.

(6) A notification under sub-paragraph (5) above shall be by notice in writing and signed by the Secretary of State.

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10.—(1) The Secretary of State may, as respects a person detained under an interim custody order—

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- (a) direct his discharge unconditionally ; or
- (b) direct his release (whether or not subject to conditions) for a specified period.

(2) The Secretary of State may, as respects a person detained under a detention order,—

- (a) direct his discharge unconditionally ; or
- (b) direct his release subject to conditions or for a specified period, or both.

(3) The Secretary of State may recall to detention a person released under sub-paragraph (1)(b) or (2)(b) above and a person so recalled may be detained under the original interim custody or detention order, as the case may be.

(4) Where a person is released under sub-paragraph (1)(b) above, any period during which he is not in detention shall be left out of account for the purposes of paragraphs 5(1), 6(2) and 8(3) above.

11.—(1) A person required to be detained under an interim custody order or a detention order may be detained in a prison or in some other place approved for the purposes of this paragraph by the Secretary of State.

(2) A person for the time being having custody of a person required to be detained as aforesaid shall have all the powers, authorities, protection and privileges of a constable.

(3) Subject to any directions of the Secretary of State, a person required to be detained as aforesaid shall be treated as nearly as may be as if he were a prisoner detained in a prison on remand and any power of temporary removal for judicial, medical or other purposes shall apply accordingly.

(4) A person required to be detained as aforesaid who is unlawfully at large may be arrested without warrant by any constable or any member of Her Majesty's forces on duty.

12. Where a person required to be detained under an interim custody order is unlawfully at large, the interim custody order shall not cease to have effect under paragraph 5 or 8 above while he remains at large ; and, upon his being taken again into custody, those paragraphs shall have effect as if the date of the interim custody order were that of his being taken again into custody.

13. Any person who—

- (a) being detained under an interim custody order or detention order, escapes ;
- (b) rescues any person detained as aforesaid, or assists a person so detained in escaping or attempting to escape ;
- (c) fails to return to detention at the expiration of a period for which he was released under paragraph 10(1)(b) or (2)(b) above ; or

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- (d) knowingly harbours any person required to be detained under an interim custody order or detention order, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody,

shall be liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or to both.

14.—(1) Any document purporting to be an order, notice or direction made or given by the Secretary of State for the purposes of this Part of this Schedule or Schedule 1 to the principal Act and to be signed in accordance with the said Part or the said Schedule 1 shall be received in evidence and shall, until the contrary is proved, be deemed to be duly made or given and signed.

(2) Prima facie evidence of any such order, notice or direction may, in any legal proceedings, be given by the production of a document bearing a certificate purporting to be signed by or on behalf of the Secretary of State and stating that the document is a true copy of the order, notice or direction; and the certificate shall be received in evidence, and shall, until the contrary is proved, be deemed to be duly made and signed.

15. The Secretary of State may make such payments to persons released or about to be released from detention under this Part of this Schedule as he may, with the consent of the Treasury, determine.

PART II

TRANSITIONAL PROVISIONS

16.—(1) Any interim custody order or detention order made under Schedule 1 to the principal Act which is in force immediately before the commencement of this Act shall have effect as if it had been made under paragraph 4 or paragraph 8 above, as the case may be, and, in the case of an interim custody order, as if it had been so made immediately upon the commencement of this Act.

(2) Any statement served under paragraph 13 of Schedule 1 to the principal Act shall have effect as if it had been served under paragraph 6 above immediately upon the commencement of this Act.

(3) Any proceedings under Part III of Schedule 1 to the principal Act which have begun but are not completed before the commencement of this Act shall be continued as if this Act had not been passed.

(4) In so far as any other thing made or done under Schedule 1 to the principal Act could have been made or done under any provision of Part I of this Schedule, it shall have effect as if it had been made or done under that provision.

SCHEDULE 2

Section 18.

AMENDMENTS OF PART I OF SCHEDULE 4 TO THE PRINCIPAL ACT

1. Part I of Schedule 4 to the principal Act shall be amended as set out below.

2. After paragraph 4B (inserted by paragraph 1(2) of Schedule 2 to the Criminal Jurisdiction Act 1975) insert—

1975 c. 59.

“4C. Assault occasioning actual bodily harm, subject to note 1 below.”

3. In paragraph 5 (malicious damage) after sub-paragraph (o) (inserted by the said Schedule 2) insert—

“(p) section 51 (injuries not provided for earlier in the Act) subject to note 1A below.”

4. In paragraph 6 (offences against the person) before sub-paragraph (a) insert—

“(aa) section 4 (conspiracy, etc. to murder) subject to note 2 below ; ”

and omit sub-paragraph (f).

5. After paragraph 7 insert—

“*Prison Act (Northern Ireland) 1953*

7A. Offences under the following provisions of the Prison Act (Northern Ireland) 1953, subject to note 2 below,—

(a) section 25 (being unlawfully at large while under sentence) ;

(b) section 26 (escaping from lawful custody and failing to surrender to bail) ;

(c) section 27 (attempting to break prison) ;

(d) section 28 (breaking prison by force or violence) ;

(e) section 29 (rescuing or assisting or permitting to escape from lawful custody persons under sentence of death or life imprisonment) ;

(f) section 30 (rescuing or assisting or permitting to escape from lawful custody persons other than persons under sentence of death or life imprisonment) ;

(g) section 32 (causing discharge of prisoner under pretended authority) ;

(h) section 33 (assisting prisoners to escape by conveying things into prisons).”

6. In paragraph 9 (firearms)—

in sub-paragraph (a) for “1” substitute “1(1)” ;

in sub-paragraph (b) for “2” substitute “2(1), (2), (3) or (4)” ;

in sub-paragraph (d) for “4” substitute “4(1)” ;

at the end of sub-paragraph (h) insert “, subject to note 3 below”.

*Northern Ireland (Emergency
Provisions) (Amendment) Act 1975*

SCH. 2 7. After paragraph 12 insert—

“ Northern Ireland (Emergency Provisions) (Amendment) Act 1975

13. Offences under the following provisions of the Northern Ireland (Emergency Provisions) (Amendment) Act 1975—

(a) section 15 (training in firearms, explosives, etc.),

(b) paragraph 13 of Schedule 1 (escape or rescue from detention, etc.).”

8. In Note 1, for the words “Neither murder nor manslaughter shall” substitute “Murder, manslaughter or an assault occasioning actual bodily harm shall not”.

9. After Note 1 insert—

“ 1A. An offence under section 51 of the Malicious Damage Act 1861 shall be a scheduled offence only where it is charged that the damaged property was a motor vehicle as defined in the Road Traffic Act (Northern Ireland) 1970 or property in the occupation or possession of the Commissioners of Customs and Excise.”

10. In Note 2—

(a) for “ 18, 20 or 47 ” substitute “ 4, 18 or 20 ” ;

(b) after “ 1861 ” insert “ or section 25, 26, 27, 28, 29, 30, 32 or 33 of the Prison Act (Northern Ireland) 1953 ”.

11. For Note 3 substitute—

“ 3. An offence under section 17 of the Firearms Act (Northern Ireland) 1969 shall be a scheduled offence only where it is charged that the offence relates to a weapon other than an air weapon.”

12. In Note 4, for the words from “offensive weapon” onwards substitute “weapon of offence was used to commit the offence; and expressions defined in section 10 of the Theft Act (Northern Ireland) 1969 have the same meaning when used in this note”.

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SCHEDULE 3

Section 23(2).

ENACTMENTS REPEALED

Chapter	Short Title	Extent of Repeal
50 & 51 Vict. c. 20.	The Criminal Law and Procedure (Ireland) Act 1887.	The whole Act.
52 & 53 Vict. c. 69.	The Public Bodies Corrupt Practices Act 1889.	Section 9.
1 & 2 Geo. 5. c. 28.	The Official Secrets Act 1911.	Section 10(4).
25 & 26 Geo. 5. c. 13 (N.I.).	The Summary Jurisdiction and Criminal Justice Act (Northern Ireland) 1935.	Section 55.
1964 c. 21 (N.I.).	The Magistrates' Courts Act (Northern Ireland) 1964.	Section 2(2). Section 59(2)(b) and the word "and" immediately preceding it.
1973 c. 53.	The Northern Ireland (Emergency Provisions) Act 1973.	In section 3(4) the words " of the High Court ". In section 4, in subsection (1), the words " or the Belfast Recorder's Court ", in subsection (2), the words " or to the Belfast Recorder's Court " and in subsection (3), the words " except the power to admit to bail ". Section 5. Section 10(5). Section 22. In section 28(1), the definitions of " imitation firearm " and " offensive weapon ". In section 30(6), the words " the Belfast Recorder's Court ". Schedule 1. In Schedule 4, paragraphs 6(f) and 8.

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Northern Ireland (Emergency Provisions) Act 1978

CHAPTER 5

ARRANGEMENT OF SECTIONS

PART I

SCHEDULED OFFENCES

Preliminary enquiries, bail and young persons in custody

Section

1. Preliminary enquiry into scheduled offences.
2. Limitation of power to grant bail in case of scheduled offences.
3. Legal aid to applicants for bail in case of scheduled offences.
4. Holding in custody of young persons charged with scheduled offences.
5. Directions under s. 4.

Court and mode of trial

6. Court for trial on indictment of scheduled offences.
7. Mode of trial on indictment of scheduled offences.

Evidence, onus of proof and treatment of convicted young persons

8. Admissions by persons charged with scheduled offences.
9. Onus of proof in relation to offences of possession.
10. Treatment of young persons convicted of scheduled offences.

A

PART II

POWERS OF ARREST, DETENTION, SEARCH AND
SEIZURE, ETC.

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ELIZABETH II



Northern Ireland (Emergency Provisions) Act 1978

1978 CHAPTER 5

An Act to consolidate, with certain exceptions, the Northern Ireland (Emergency Provisions) Act 1973, the Northern Ireland (Young Persons) Act 1974 and the Northern Ireland (Emergency Provisions) (Amendment) Act 1975. A.D. 1978
[23rd March 1978]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I

SCHEDULED OFFENCES

Preliminary enquiries, bail and young persons in custody

1.—(1) Where in any proceedings before a magistrates' court for a scheduled offence (not being an extra-territorial offence as defined in section 1(3) of the Criminal Jurisdiction Act 1975) the prosecutor requests the court to conduct a preliminary enquiry into the offence under the Criminal Procedure (Committal for Trial) Act (Northern Ireland) 1968, the court shall, notwithstanding anything in section 1 of that Act of 1968, conduct a preliminary enquiry into the offence unless the court is of opinion that in the interests of justice a preliminary investigation should be conducted into the offence under Part VI of the Magistrates' Courts Act (Northern Ireland) 1964. Preliminary enquiry into scheduled offences. 1975 c. 59. 1968 c. 32 (N.I.). 1964 c. 21 (N.I.).

(2) Where in any proceedings a person charged with a scheduled offence is also charged with another offence which is

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not a scheduled offence, that other offence shall be treated as a scheduled offence for the purposes of subsection (1) above.

Limitation
of power to
grant bail
in case of
scheduled
offences.

2.—(1) Subject to the provisions of this section, a person to whom this section applies shall not be admitted to bail except—

- (a) by a judge of the Supreme Court ; or
- (b) by the judge of the court of trial, on adjourning the trial of a person so charged.

(2) A judge shall not admit any such person to bail unless he is satisfied that the applicant—

- (a) will comply with the conditions on which he is admitted to bail ; and
- (b) will not interfere with any witness ; and
- (c) will not commit any offence while he is on bail.

(3) Without prejudice to any other power to impose conditions on admission to bail, a judge may impose such conditions on admitting a person to bail under this section as appear to him to be likely to result in that person's appearance at the time and place required or to be necessary in the interests of justice or for the prevention of crime.

(4) Nothing in this section shall prejudice any right of appeal against the refusal of a judge to grant bail.

(5) This section applies, subject to subsection (6) below, to any person—

- (a) who is charged with a scheduled offence ; and
- (b) who has attained the age of 14 ; and
- (c) who is not a serving member of any of Her Majesty's regular naval, military or air forces.

(6) This section does not apply to a person charged with a scheduled offence—

- (a) which is being tried summarily ; or
- (b) which the Director of Public Prosecutions for Northern Ireland certifies is in his opinion suitable to be tried summarily.

3.—(1) Where it appears to a judge of the Supreme Court—

- (a) that a person charged with a scheduled offence intends to apply to be admitted to bail ; and
- (b) that it is desirable in the interests of justice that that person should have legal aid but that he has not sufficient means to enable him to obtain that aid,

the judge may assign to him a solicitor and counsel, or counsel only, in the application for bail.

Legal aid to
applicants
for bail
in case of
scheduled
offences.

(2) If, on a question of granting a person free legal aid under this section, there is a doubt whether his means are sufficient to enable him to obtain legal aid or whether it is desirable in the interests of justice that he should have free legal aid, the doubt shall be resolved in favour of granting him free legal aid.

PART I

(3) Sections 24, 27 and 32 of the Legal Aid and Advice Act 1965 c. 8 (Northern Ireland) 1965 (statements, payments, rules and stamp duty) shall apply in relation to legal aid under this section as they apply in relation to legal aid under Part II of that Act as if any legal aid under this section were given in pursuance of a criminal aid certificate under section 21 of that Act. (N.I.).

4.—(1) Where a person to whom this section applies has been remanded or committed for trial as respects a scheduled offence and is not released on bail, he may—

Holding in custody of young persons charged with scheduled offences.

(a) notwithstanding the provisions of any enactment, and

(b) whether or not he was remanded or committed for trial at a time when this section was not in force,

be held in custody in such prison or other place as may be specified in a direction given by the Secretary of State under this section (in this section and section 5 below referred to as “a direction”).

(2) The Secretary of State may give a direction in respect of a person to whom this section applies if he considers that it is necessary, in order to prevent his escape or to ensure his safety or the safety of others, to make special arrangements as to the place at which that person is to be held in custody while on remand or while committed for trial.

(3) A direction may be given by the Secretary of State at any time after the young person to whom it relates has been charged with a scheduled offence, and may be varied or revoked by a further direction.

(4) This section applies to any young person charged with a scheduled offence.

(5) In this section “young person” means a person who has attained the age of 14 and is under the age of 17.

5.—(1) A direction shall, if it has not previously ceased to have effect, cease to have effect at the expiration of such period as may be specified in the direction (being a period not exceeding two months beginning with the date of the direction), unless continued in force by a further direction. Directions under s. 4.

(2) Where, by virtue of a direction, a young person is held in custody in a prison or other place and the direction ceases

c. 5 *Northern Ireland (Emergency Provisions) Act 1978*

PART I

to have effect (whether or not by reason of the expiry or cesser of section 4 above) it shall be lawful for him to continue to be held in custody in that prison or place until arrangements can be made for him to be held in custody in accordance with the law then applicable to his case.

(3) Nothing in subsection (2) above shall be taken to make lawful the holding in custody of any person who would, disregarding that subsection, be entitled to be released from custody.

Court and mode of trial

6.—(1) A trial on indictment of a scheduled offence shall be held only at the Belfast City Commission.

(2) A magistrates' court which commits a person for trial on indictment for a scheduled offence or two or more offences which are or include scheduled offences shall commit him for trial to the Belfast City Commission and section 47 of the Magistrates' Courts Act (Northern Ireland) 1964 (committal to assize or county court) shall have effect accordingly.

(3) A county court judge may at any time, at the request of the Lord Chief Justice of Northern Ireland, sit and act as a judge at the Belfast City Commission for the trial on indictment of a scheduled offence, or for two or more such trials, and while so sitting and acting shall have all the jurisdiction, powers and privileges of a High Court judge included in the Commission, so far as concerns any such trial.

(4) A county court judge requested to sit and act as aforesaid for a period of time may, notwithstanding the expiry of that period, attend at the Belfast City Commission for the purpose of continuing to deal with, giving judgment in or dealing with any ancillary matter relating to, any case which may have begun before him when sitting as a judge at the Commission and shall have the same jurisdiction, powers and privileges as under subsection (3) above.

7.—(1) A trial on indictment of a scheduled offence shall be conducted by the court without a jury.

(2) The court trying a scheduled offence on indictment under this section shall have all the powers, authorities and jurisdiction which the court would have had if it had been sitting with a jury, including power to determine any question and to make any finding which would, apart from this section, be required to be determined or made by a jury, and references in any enactment to a jury or the verdict or finding of a jury shall be construed accordingly in relation to a trial under this section.

Court for trial on indictment of scheduled offences.

1964 c. 21 (N.I.).

Mode of trial on indictment of scheduled offences.

PART I

(3) Where separate counts of an indictment allege a scheduled offence and an offence which is not a scheduled offence, the trial on indictment shall, without prejudice to section 5 of the Indictments Act (Northern Ireland) 1945 (orders for amendment of indictment, separate trial and postponement of trial), be conducted as if all the offences alleged in the indictment were scheduled offences. 1945 c. 16 (N.I.).

(4) Without prejudice to subsection (2) above, where the court trying a scheduled offence on indictment—

- (a) is not satisfied that the accused is guilty of that offence, but
- (b) is satisfied that he is guilty of some other offence which is not a scheduled offence, but of which a jury could have found him guilty on a trial for the scheduled offence,

the court may convict him of that other offence.

(5) Where the court trying a scheduled offence convicts the accused of that or some other offence, then, without prejudice to its power apart from this subsection to give a judgment, it shall, at the time of conviction or as soon as practicable thereafter, give a judgment stating the reasons for the conviction.

(6) A person convicted of any offence on a trial under this section without a jury may, notwithstanding anything in section 8 of the Criminal Appeal (Northern Ireland) Act 1968, appeal to the Court of Criminal Appeal under that section— 1968 c. 21.

- (a) against his conviction, on any ground, without the leave of the Court of Criminal Appeal or a certificate of the judge of the court of trial; and
- (b) against sentence passed on conviction, without that leave, unless the sentence is one fixed by law.

(7) Where a person is so convicted, the time for giving notice of appeal under subsection (1) of section 20 of that Act of 1968 shall run from the date of judgment, if later than the date from which it would run under that subsection.

Evidence, onus of proof and treatment of convicted young persons

8.—(1) In any criminal proceedings for a scheduled offence, or two or more offences which are or include scheduled offences, a statement made by the accused may be given in evidence by the prosecution in so far as— Admissions by persons charged with scheduled offences.

- (a) it is relevant to any matter in issue in the proceedings; and

PART I

(b) it is not excluded by the court in pursuance of subsection (2) below.

(2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, prima facie evidence is adduced that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies it that the statement was not so obtained—

(a) exclude the statement, or

(b) if the statement has been received in evidence, either—

(i) continue the trial disregarding the statement ;

or

(ii) direct that the trial shall be restarted before a differently constituted court (before which the statement in question shall be inadmissible).

(3) This section does not apply to a summary trial.

Onus of
proof in
relation to
offences of
possession.

9.—(1) Where a person is charged with possessing a proscribed article in such circumstances as to constitute an offence to which this section applies and it is proved that at the time of the alleged offence—

(a) he and that article were both present in any premises ;
or

(b) the article was in premises of which he was the occupier or which he habitually used otherwise than as a member of the public,

the court may accept the fact proved as sufficient evidence of his possessing (and, if relevant, knowingly possessing) that article at that time unless it is further proved that he did not at that time know of its presence in the premises in question, or, if he did know, that he had no control over it.

(2) This section applies to vessels, aircraft and vehicles as it applies to premises.

(3) In this section “proscribed article” means an explosive, firearm, ammunition, substance or other thing (being a thing possession of which is an offence under one of the enactments mentioned in subsection (4) below).

(4) This section applies to scheduled offences under the following enactments, that is to say—

1883 c. 3.

The Explosive Substances Act 1883

Section 3, so far as relating to subsection (1)(b) thereof (possessing explosive with intent to endanger life or cause serious damage to property).

Northern Ireland (Emergency Provisions) Act 1978 c. 5

7

Section 4 (possessing explosive in suspicious circumstances). PART I

The Firearms Act (Northern Ireland) 1969 1969 c. 12
(N.I.).

Section 1 (possessing firearm or ammunition without, or otherwise than as authorised by, a firearm certificate).

Section 4 (possessing machine gun, or weapon discharging, or ammunition containing, noxious substance).

Section 14 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property).

Section 15(2) (possessing firearm or imitation firearm at time of committing, or being arrested for, a specified offence).

Section 19(1) to (3) (possession of a firearm or ammunition by a person who has been sentenced to imprisonment, etc.).

Section 19A (possessing firearm or ammunition in suspicious circumstances).

The Protection of the Person and Property Act 1969 c. 29
(N.I.).
(*Northern Ireland*) 1969

Section 2 (possessing petrol bomb, etc., in suspicious circumstances).

(5) This section does not apply to a summary trial.

10.—(1) Section 73(2) of the Children and Young Persons Act (Northern Ireland) 1968 (under which a court may sentence a child or young person convicted on indictment of an offence punishable in the case of an adult with imprisonment for fourteen years or more to detention for a period specified in the sentence) shall have effect in relation to a young person convicted of a scheduled offence committed while this subsection is in force with the substitution of the word “five” for the word “fourteen”. Treatment of young persons convicted of scheduled offences.
1968 c. 34
(N.I.).

(2) Subsection (3) of section 74 of that Act (under which the maximum length of the term or the aggregate of the terms for which a person may be committed in custody to a remand home under section 74(1)(e) is one month) shall have effect in relation to a young person found guilty of a scheduled offence committed while this subsection is in force with the substitution of the words “six months” for the words “one month”

PART II

POWERS OF ARREST, DETENTION, SEARCH AND SEIZURE, ETC.

Arrest of
terrorists.

11.—(1) Any constable may arrest without warrant any person whom he suspects of being a terrorist.

(2) For the purpose of arresting a person under this section a constable may enter and search any premises or other place where that person is or where the constable suspects him of being.

1964 c. 21
(N.I.).
1968 c. 34
(N.I.).

(3) A person arrested under this section shall not be detained in right of the arrest for more than seventy-two hours after his arrest, and section 132 of the Magistrates' Courts Act (Northern Ireland) 1964 and section 50(3) of the Children and Young Persons Act (Northern Ireland) 1968 (requirement to bring arrested person before a magistrates' court not later than forty-eight hours after his arrest) shall not apply to any such person.

(4) Where a person is arrested under this section, an officer of the Royal Ulster Constabulary not below the rank of chief inspector may order him to be photographed and to have his finger prints and palm prints taken by a constable, and a constable may use such reasonable force as may be necessary for that purpose.

Detention of
terrorists, etc.

12. Schedule 1 to this Act shall have effect with respect to the detention of terrorists and persons suspected of being terrorists.

Constables'
general power
of arrest
and seizure.

13.—(1) Any constable may arrest without warrant any person whom he suspects of committing, having committed or being about to commit a scheduled offence or an offence under this Act which is not a scheduled offence.

(2) For the purposes of arresting a person under this section a constable may enter and search any premises or other place where that person is or where the constable suspects him of being.

(3) A constable may seize anything which he suspects is being, has been or is intended to be used in the commission of a scheduled offence or an offence under this Act which is not a scheduled offence.

Powers of
arrest of
members
of Her
Majesty's
forces.

14.—(1) A member of Her Majesty's forces on duty may arrest without warrant, and detain for not more than four hours, a person whom he suspects of committing, having committed or being about to commit any offence.

(2) A person effecting an arrest under this section complies with any rule of law requiring him to state the ground of arrest

if he states that he is effecting the arrest as a member of Her Majesty's forces. PART II

(3) For the purpose of arresting a person under this section a member of Her Majesty's forces may enter and search any premises or other place—

- (a) where that person is, or
- (b) if that person is suspected of being a terrorist or of having committed an offence involving the use or possession of an explosive, explosive substance or firearm, where that person is suspected of being.

15.—(1) Any member of Her Majesty's forces on duty or any constable may enter any premises or other place other than a dwelling-house for the purpose of ascertaining— Power to search for munitions and radio transmitters.

- (a) whether there are any munitions unlawfully at that place ; or
- (b) whether there is a transmitter at that place ;

and may search the place for any munitions or transmitter with a view to exercising the powers conferred by subsection (4) below.

(2) Any member of Her Majesty's forces on duty authorised by a commissioned officer of those forces or any constable authorised by an officer of the Royal Ulster Constabulary not below the rank of chief inspector may enter any dwelling-house in which it is suspected that there are unlawfully any munitions or that there is a transmitter and may search it for any munitions or transmitter with a view to exercising the said powers.

(3) Any member of Her Majesty's forces on duty or any constable may—

- (a) stop any person in any public place and, with a view to exercising the said powers, search him for the purpose of ascertaining whether he has any munitions unlawfully with him or any transmitter with him ; and
- (b) with a view to exercising the said powers, search any person not in a public place whom he suspects of having any munitions unlawfully with him or any transmitter with him.

(4) A member of Her Majesty's forces or a constable—

- (a) authorised to search any premises or other place or any person under this Act, may seize any munitions found in the course of the search unless it appears to the person so authorised that the munitions are being, have been and will be used only for a lawful purpose and may retain and, if necessary, destroy them ;

PART II

(b) authorised to search any premises or other place or any person, may seize any transmitter found in the course of the search unless it appears to the person so authorised that the transmitter has been, is being and is likely to be used only lawfully and may retain it.

(5) In this section—

“munitions” means—

(a) explosives, explosive substances, firearms and ammunition ; and

(b) anything used or capable of being used in the manufacture of any explosive, explosive substance, firearm or ammunition ;

“transmitter” means any apparatus for wireless telegraphy designed or adapted for emission, as opposed to reception, and includes part of any such apparatus ;

“wireless telegraphy” has the same meaning as in section 19(1) of the Wireless Telegraphy Act 1949.

1949 c. 54.

Powers of
explosives
inspectors.
1875 c. 17.

16.—(1) An inspector appointed under section 53 of the Explosives Act 1875 may, for the purpose of ascertaining whether there is unlawfully in any premises or other place other than a dwelling-house any explosive or explosive substance, enter that place and search it with a view to exercising the powers conferred by subsection (3) below.

(2) Any such inspector may stop any person in a public place and search him for the purpose of ascertaining whether he has any explosive or explosive substance unlawfully with him with a view to exercising the said powers.

(3) Any such inspector may seize any explosive or explosive substance found in the course of a search under this section unless it appears to him that it is being, has been and will be used only for a lawful purpose and may retain and, if necessary, destroy it.

17.—(1) Where any person is believed to be unlawfully detained in such circumstances that his life is in danger, any member of Her Majesty's forces on duty or any constable may, subject to subsection (2) below, enter any premises or other place for the purpose of ascertaining whether that person is so detained there.

(2) A dwelling-house may be entered in pursuance of subsection (1) above—

(a) by a member of Her Majesty's forces, only when authorised to do so by a commissioned officer of those forces ; and

Entry to
search for
persons
unlawfully
detained.

- (b) by a constable, only when authorised to do so by an officer of the Royal Ulster Constabulary not below the rank of chief inspector. PART II

18.—(1) Any member of Her Majesty's forces on duty or any constable may stop and question any person for the purpose of ascertaining— Power to stop and question.

- (a) that person's identity and movements ;
- (b) what he knows concerning any recent explosion or any other incident endangering life or concerning any person killed or injured in any such explosion or incident ; or
- (c) any one or more of the matters referred to in paragraphs (a) and (b) above.

(2) Any person who—

- (a) fails to stop when required to do so under this section, or
- (b) refuses to answer, or fails to answer to the best of his knowledge and ability, any question addressed to him under this section,

shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

19.—(1) Any member of Her Majesty's forces on duty or any constable may enter any premises or other place— General powers of entry and interference with rights of property and with highways.

- (a) if he considers it necessary to do so in the course of operations for the preservation of the peace or the maintenance of order ; or
- (b) if authorised to do so by or on behalf of the Secretary of State.

(2) Any member of Her Majesty's forces on duty, any constable or any person specifically authorised to do so by or on behalf of the Secretary of State may, if authorised to do so by or on behalf of the Secretary of State—

- (a) take possession of any land or other property ;
- (b) take steps to place buildings or other structures in a state of defence ;
- (c) detain any property or cause it to be destroyed or moved ;
- (d) do any other act interfering with any public right or with any private rights of property, including carrying out any works on any land of which possession has been taken under this subsection.

PART II

(3) Any member of Her Majesty's forces on duty, any constable or any person specifically authorised to do so by or on behalf of the Secretary of State may, so far as he considers it immediately necessary for the preservation of the peace or the maintenance of order—

- (a) wholly or partly close a highway or divert or otherwise interfere with a highway or the use of a highway ; or
- (b) prohibit or restrict the exercise of any right of way or the use of any waterway.

(4) Any person who, without lawful authority or reasonable excuse (the proof of which lies on him), interferes with works executed, or any apparatus, equipment or any other thing used, in or in connection with the exercise of powers conferred by this section, shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

(5) Any authorisation to exercise any powers under any provision of this section may authorise the exercise of all those powers, or powers of any class or a particular power specified, either by all persons by whom they are capable of being exercised or by persons of any class or a particular person specified.

Supplementary provisions.

20.—(1) Any power conferred by this Part of this Act—

- (a) to enter any premises or other place includes power to enter any vessel, aircraft or vehicle ;
- (b) to search any premises or other place includes power to stop and search any vehicle or vessel or any aircraft which is not airborne and search any container ;

and in this Part of this Act references to any premises or place shall be construed accordingly.

(2) In this Part of this Act references to a dwelling-house include references to a vessel or vehicle which is habitually stationary and used as a dwelling.

(3) Any power conferred by this Part of this Act to enter any place, vessel, aircraft or vehicle shall be exercisable, if need be, by force.

(4) Any power conferred by virtue of this section to search a vehicle or vessel shall, in the case of a vehicle or vessel which cannot be conveniently or thoroughly searched at the place where it is, include power to take it or cause it to be taken to any place for the purpose of carrying out the search.

(5) Any power conferred by virtue of this section to search any vessel, aircraft, vehicle or container includes power to examine it.

PART II

(6) Any power conferred by this Part of this Act to stop any person includes power to stop a vessel or vehicle or an aircraft which is not airborne.

(7) Any person who, when required by virtue of this section to stop a vessel or vehicle or any aircraft which is not airborne, fails to do so shall be liable on summary conviction to imprisonment to a term not exceeding six months or to a fine not exceeding £400, or both.

(8) A member of Her Majesty's forces exercising any power conferred by this Part of this Act when he is not in uniform shall, if so requested by any person at or about the time of exercising that power, produce to that person documentary evidence that he is such a member.

(9) The Documentary Evidence Act 1868 shall apply to any 1868 c. 37. authorisation given in writing under this Part of this Act by or on behalf of the Secretary of State as it applies to any order made by him.

PART III

OFFENCES AGAINST PUBLIC SECURITY AND PUBLIC ORDER

21.—(1) Subject to subsection (7) below, any person who— Proscribed organisations.
 (a) belongs or professes to belong to a proscribed organisation ; or

(b) solicits or invites financial or other support for a proscribed organisation, or knowingly makes or receives any contribution in money or otherwise to the resources of a proscribed organisation ; or

(c) solicits or invites any person to become a member of a proscribed organisation or to carry out on behalf of a proscribed organisation orders or directions given, or requests made, by a member of that organisation, shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both, and on conviction on indictment to imprisonment for a term not exceeding ten years or to a fine, or both.

(2) The court by or before which a person is convicted of an offence under this section may order the forfeiture of any money or other property which at the time of the offence he had in his possession or under his control for the use or benefit of the proscribed organisation.

(3) The organisations specified in Schedule 2 to this Act are proscribed organisations for the purposes of this section ; and any organisation which passes under a name mentioned in that Schedule shall be treated as proscribed, whatever relationship (if any) it has to any other organisation of the same name.

PART III

(4) The Secretary of State may by order add to Schedule 2 to this Act any organisation that appears to him to be concerned in terrorism or in promoting or encouraging it.

(5) The Secretary of State may also by order remove an organisation from Schedule 2 to this Act.

(6) The possession by a person of a document—

(a) addressed to him as a member of a proscribed organisation ; or

(b) relating or purporting to relate to the affairs of a proscribed organisation ; or

(c) emanating or purporting to emanate from a proscribed organisation or officer of a proscribed organisation,

shall be evidence of that person belonging to the organisation at the time when he had the document in his possession.

(7) A person belonging to a proscribed organisation shall—

(a) if the organisation is a proscribed organisation by virtue of an order under subsection (4) above ; or

(b) if this section has ceased to be in force but has been subsequently brought into force by an order under section 33(3) below,

not be guilty of an offence under this section by reason of belonging to the organisation if he has not after the coming into force of the order under subsection (4) above or the coming into force again of this section, as the case may be, taken part in any activities of the organisation.

(8) Subsection (7) above shall apply in relation to a person belonging to the Red Hand Commando, the Ulster Freedom Fighters or the Ulster Volunteer Force as if the organisation were proscribed by virtue of an order under subsection (4) above with the substitution, in subsection (7), for the reference to the coming into force of such an order of a reference—

(a) as respects a person belonging to the Red Hand Commando or the Ulster Freedom Fighters, to 12th November 1973 ;

(b) as respects a person belonging to the Ulster Volunteer Force, to 4th October 1975.

22.—(1) No person shall, without lawful authority or reasonable excuse (the proof of which lies on him)—

(a) collect, record, publish, communicate or attempt to elicit any information with respect to any person to whom this paragraph applies which is of such a nature as is likely to be useful to terrorists ;

Unlawful
collection,
etc. of
information.

PART III

- (b) collect or record any information which is of such a nature as is likely to be useful to terrorists in planning or carrying out any act of violence ; or
- (c) have in his possession any record of or document containing any such information as is mentioned in paragraph (a) or (b) above.

(2) Subsection (1)(a) above applies to any of the following persons, that is to say—

- (a) any constable or member of Her Majesty's forces ;
- (b) any person holding judicial office ;
- (c) any officer of any court ; and
- (d) any person employed for the whole of his time in the prison service in Northern Ireland.

(3) In subsection (1) above any reference to recording information includes a reference to recording it by means of photography or by any other means.

(4) If any person contravenes this section, he shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both ;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years or a fine, or both.

(5) The court by or before which a person is convicted of an offence under this section may order the forfeiture of any record or document mentioned in subsection (1) above which is found in his possession.

(6) Without prejudice to section 33 of the Interpretation Act 1889 (offences under two or more laws), nothing in this section shall derogate from the operation of the Official Secrets Acts 1911 and 1920. 1889 c. 63.

23.—(1) Subject to subsection (2) below, any person who instructs or trains another or receives instruction or training in the making or use of firearms, explosives or explosive substances shall be liable— Training in making or use of firearms, explosives or explosive substances.

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both ;
- (b) on conviction on indictment, to imprisonment for a term not exceeding ten years or to a fine, or both.

(2) In any prosecution for an offence under this section it shall be a defence for the person charged to prove that the

16 c. 5 *Northern Ireland (Emergency Provisions) Act 1978*

PART III instruction or training was given or received with lawful authority or for industrial, agricultural or sporting purposes only or otherwise with good reason.

(3) The court by or before which a person is convicted of an offence under this section may order the forfeiture of any thing which appears to the court to have been in his possession for purposes connected with the offence.

1889 c. 63. (4) Without prejudice to section 33 of the Interpretation Act 1889 (offences under two or more laws), nothing in this section shall derogate from the operation of the Unlawful Drilling Act 1819.

Failure to disperse when required to do so.

24.—(1) Where any commissioned officer of Her Majesty's forces or any officer of the Royal Ulster Constabulary not below the rank of chief inspector is of opinion that any assembly of three or more persons—

(a) may lead to a breach of the peace or public disorder; or

(b) may make undue demands on the police or Her Majesty's forces,

he, or any member of those forces on duty or any constable, may order the persons constituting the assembly to disperse forthwith.

(2) Where an order is given under this section with respect to an assembly, any person who thereafter joins or remains in the assembly or otherwise fails to comply with the order shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

Dressing or behaving in a public place like a member of a proscribed organisation.

25. Any person who in a public place dresses or behaves in such a way as to arouse reasonable apprehension that he is a member of a proscribed organisation shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

Wearing of hoods, etc. in public places.

26. Any person who, without lawful authority or reasonable excuse (the proof of which lies on him), wears in a public place or in the curtilage of a dwelling-house (other than one in which he is residing) any hood, mask or other article whatsoever made, adapted or used for concealing the identity or features shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

PART IV

MISCELLANEOUS AND GENERAL

27.—(1) The Secretary of State may by regulations make provision additional to the foregoing provisions of this Act for promoting the preservation of the peace and the maintenance of order. Supplementary regulations for preserving the peace, etc.

(2) Any person contravening or failing to comply with the provisions of any regulations under this section or any instrument or directions under any such regulations shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £400, or both.

(3) The regulations contained in Schedule 3 to this Act shall be deemed to have been made under this section and to have been approved in draft by each House of Parliament, and may be varied or revoked accordingly.

28.—(1) Where under this Act any real or personal property is taken, occupied, destroyed or damaged, or any other act is done interfering with private rights of property, compensation shall, subject to the provisions of this section, be payable by the Secretary of State. Compensation.

(2) Any question as to compensation under this section shall, in default of agreement, be referred for determination to the county court or an arbitrator to be appointed by that court.

(3) The procedure for determining any question referred under subsection (2) above shall be that prescribed by rules made by the Lord Chief Justice of Northern Ireland after consultation with the Secretary of State.

(4) Nothing in this section shall be construed as giving to any person by whom an offence has been committed any right to compensation in respect of property taken, occupied, destroyed or damaged or in respect of any other act done in connection with the offence.

29.—(1) A prosecution shall not be instituted in respect of any offence under this Act except by or with the consent of the Director of Public Prosecutions for Northern Ireland. Restriction of prosecutions.

(2) Article 7 of the Prosecution of Offences (Northern Ireland) Order 1972 shall apply in relation to any offence under this Act as if subsection (1) above were a consent provision within the meaning of that Article. S.I. 1972/538 (N.I. 1).

PART IV
The
scheduled
offences.

30.—(1) In this Act “scheduled offence” means an offence specified in Part I or Part III of Schedule 4 to this Act, subject, however, to any relevant note contained in the said Part I.

(2) Part II of that Schedule shall have effect with respect to offences related to those specified in Part I of that Schedule.

(3) The Secretary of State may by order amend Parts I and II of that Schedule (whether by adding an offence to, or removing an offence from, either of those Parts, or otherwise).

Interpretation.

31.—(1) In this Act, except so far as the context otherwise requires—

“constable” includes any member of the Royal Naval, Military or Air Force Police;

“dwelling-house” means any building or part of a building used as a dwelling;

“enactment” includes an enactment of the Parliament of Northern Ireland and a Measure of the Northern Ireland Assembly;

“explosive” means any article or substance manufactured for the purpose of producing a practical effect by explosion;

“explosive substance” means any substance for the time being specified in regulations made under section 3 of the Explosives Act (Northern Ireland) 1970;

“firearm” includes an air gun or air pistol;

“proscribed organisation” means an organisation for the time being specified in Schedule 2 to this Act, including an organisation which is to be treated as a proscribed organisation by virtue of section 21(3) above;

“public place” means a place to which for the time being members of the public have or are permitted to have access, whether on payment or otherwise;

“scheduled offence” has the meaning ascribed to it by section 30 above;

“terrorism” means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear;

“terrorist” means a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism;

“vehicle” includes a hovercraft.

(2) Any reference in this Act, except so far as the context otherwise requires, to an enactment shall be construed as a reference to that enactment as amended, applied or extended by or under any other enactment, including this Act. PART IV

(3) It is hereby declared that in applying section 38(1) of the Interpretation Act 1889 (effect of repeal and re-enactment) for the construction of references in this Act to other Acts or enactments, account is to be taken of repeal and re-enactment by a Measure of the Northern Ireland Assembly or an Order in Council. 1889 c. 63.

32.—(1) Any power to make orders or regulations conferred by this Act (except the powers to make orders conferred by Schedules 1 and 3 to this Act) shall be exercisable by statutory instrument. Orders and regulations.

(2) Any power to make an order under any provision of this Act shall include power to vary or revoke any order under that provision.

(3) No order or regulations under this Act (except an order under either of those Schedules) shall be made unless—

- (a) a draft of the order or regulations has been approved by resolution of each House of Parliament ; or
- (b) it is declared in the order or regulations that it appears to the Secretary of State that by reason of urgency it is necessary to make the order or regulations without a draft having been so approved.

(4) Orders and regulations under this Act (except an order under either of those Schedules and except an order or regulations of which a draft has been so approved) shall be laid before Parliament after being made and, if at the end of the period of 40 days (computed in accordance with section 7(1) of the Statutory Instruments Act 1946) after the day on which the Secretary of State made an order or regulations a resolution has not been passed by each House approving the order or regulations in question, the order or regulations shall then cease to have effect (but without prejudice to anything previously done or to the making of a new order or new regulations). 1946 c. 36.

33.—(1) This Act (except section 32 above and this section) shall come into operation on 1st June 1978. Commencement, duration, expiry and revival of provisions of this Act.

(2) The provisions of this Act, except sections 5 and 28 to 36, Part III of Schedule 4 and Schedules 5 and 6 to this Act and, so far as they relate to offences which are scheduled offences by

PART IV virtue of the said Part III, sections 2, 6 and 7 above, shall expire with 24th July 1978 unless continued in force by an order under this section.

(3) The Secretary of State may by order provide—

- (a) that all or any of the said provisions which are for the time being in force (including any in force by virtue of an order under this section) shall continue in force for a period not exceeding six months from the coming into operation of the order ;
- (b) that all or any of the said provisions which are for the time being in force shall cease to be in force ; or
- (c) that all or any of the said provisions which are not for the time being in force shall come into force again and remain in force for a period not exceeding six months from the coming into operation of the order.

(4) The coming into force of any provision of sections 6 to 9 above (otherwise than on the commencement of this Act) shall not affect any trial on indictment where the indictment has been presented, or any summary trial which has started, before the coming into force of that provision, and any such trial shall be conducted as if the provision had not come into force.

(5) Where before the coming into force of subsection (1) of section 6 above (otherwise than on the commencement of this Act), a person has been committed for trial for a scheduled offence and the indictment has not been presented, then, on the coming into force of that subsection, he shall, if he was committed to a court of assize (other than the Belfast City Commission) or to a county court, be treated as having been committed to that Commission.

(6) The expiry or cesser of any provision mentioned in subsection (4) above shall not affect the application of that provision to any trial on indictment where the indictment has been presented, or any summary trial which has started, before the expiry or cesser.

(7) It is hereby declared that the expiry or cesser of subsection (2) of section 6 above shall not affect any committal of a person for trial under that subsection to the Belfast City Commission where the indictment has not been presented.

(8) On the expiry or cesser of any provision of this Act, section 38(2) of the Interpretation Act 1889 (effect of repeals) shall apply as if the provision had been repealed by another Act and, in the case of section 27 above, any regulations made thereunder had been enactments.

34.—(1) In section 41(5)(b) of the Supreme Court of Judicature Act (Ireland) 1877 for the words from “3(1)” onwards substitute “2(1) and 6(3) and (4) of the Northern Ireland (Emergency Provisions) Act 1978”. PART IV
Consequential
amendments.
1877 c. 57.

(2) In paragraph 8 of Schedule 3 to the Prevention of Terrorism (Temporary Provisions) Act 1976 for “1973” substitute “1978”.

(3) In section 4(1) of the Criminal Jurisdiction Act 1975 for “said Act” substitute “Northern Ireland (Emergency Provisions) Act 1973”. 1976 c. 8.
1975 c. 59.

35.—(1) Neither any rule of law nor any enactment other than this Act nor anything contained in a commission issued for the trial of any person shall be construed as limiting or otherwise affecting the operation of any provision of this Act for the time being in force, but— Transitional
provisions,
savings and
repeals.

(a) subject to the foregoing, any power conferred by this Act shall not derogate from Her Majesty’s prerogative or any powers exercisable apart from this Act by virtue of any rule of law or enactment; and

(b) subject to the foregoing and to section 33(6) above, a provision of this Act shall not affect the operation of any rule of law or enactment at a time when the provision is not in force.

(2) The transitional provisions and savings contained in Schedule 5 to this Act shall have effect.

(3) Subject to Schedule 5, the enactments specified in Schedule 6 to this Act are hereby repealed to the extent specified in column 3 of that Schedule.

36.—(1) This Act may be cited as the Northern Ireland (Emergency Provisions) Act 1978. Short title
and extent.

(2) This Act extends to Northern Ireland only.

SCHEDULES

Section 12.

SCHEDULE 1

DETENTION OF TERRORISTS

Advisers

1. The Secretary of State shall for the purposes of this Act appoint such number of Advisers as he may determine to advise him on matters concerning the detention and release of terrorists.

2. An Adviser shall be a person who holds or has held judicial office in any part of the United Kingdom or is a barrister, advocate or solicitor, in each case of not less than ten years' standing in any part of the United Kingdom.

3.—(1) An Adviser shall hold and vacate his office in accordance with the terms of his appointment and shall, on ceasing to hold office, be eligible for reappointment.

(2) An Adviser may at any time by notice in writing to the Secretary of State resign his office.

(3) The Secretary of State may pay to the Advisers such remuneration and allowances as he may determine.

Interim Custody Orders

4.—(1) Where it appears to the Secretary of State that there are grounds for suspecting that a person has been concerned—

(a) in the commission or attempted commission of any act of terrorism; or

(b) in directing, organising or training persons for the purpose of terrorism,

the Secretary of State may make an interim custody order for the temporary detention of that person.

(2) An interim custody order shall be signed by the Secretary of State or a Minister of State or Under Secretary of State.

5.—(1) The Secretary of State may, at any time before the expiration of the period of fourteen days following the date of an interim custody order, refer the case to an Adviser and, unless the case is so referred, the order shall cease to have effect at the expiration of that period.

(2) A reference to an Adviser under this paragraph shall be by notice in writing signed on behalf of the Secretary of State and a copy of the notice shall be sent to the person detained.

Reference to an Adviser

6.—(1) As soon as possible after a case is referred to an Adviser under paragraph 5 above, the person detained shall be served with a statement in writing as to the nature of the terrorist activities of which he is suspected.

(2) A person detained may, within seven days following the date on which he receives any such statement as is mentioned in subparagraph (1) above, send to the Secretary of State—

- (a) written representations concerning his case ; and
 - (b) a written request that he be seen personally by an Adviser ;
- and the Secretary of State shall send a copy of such representations or request to the Adviser concerned.

(3) The Secretary of State may pay any reasonable costs or expenses incurred by a person detained in obtaining legal advice or legal assistance in connection with the preparation of any representations he may make concerning his case.

7.—(1) Where the case of a person detained under an interim custody order is referred to an Adviser, he shall consider it and report to the Secretary of State whether or not in his opinion—

- (a) the person detained has been concerned in terrorist activities ; and
- (b) the detention of that person is necessary for the protection of the public.

(2) In considering any case referred to him an Adviser shall have regard to any information (whether oral or in writing) which is made available to, or obtained by, him and to any representations (whether oral or in writing) made by the person detained.

(3) No person shall be present during the consideration by an Adviser of the case of any person referred to him, except—

- (a) any person who for the time being is being seen by the Adviser ;
- (b) any assistant to the Adviser ; and
- (c) any person who is present in the interests of security.

(4) The Secretary of State may, at the request of an Adviser, pay any reasonable expenses incurred by any person in connection with a reference to the Adviser.

Detention Orders

8.—(1) After receiving a report made by an Adviser under paragraph 7(1) above, the Secretary of State shall consider the case of the person to whom it relates and, if he is satisfied—

- (a) that that person has been concerned in the commission or attempted commission of any act of terrorism, or in directing, organising or training persons for the purpose of terrorism ; and
- (b) that the detention of that person is necessary for the protection of the public,

the Secretary of State may make a detention order for the detention of that person.

SCH. 1

(2) If, on considering any case under sub-paragraph (1) above, the Secretary of State is not satisfied as mentioned in that sub-paragraph, he shall direct the release of the person concerned.

(3) Subject to sub-paragraphs (4) and (5) below, where—

(a) a person is detained under an interim custody order ; and

(b) a detention order is not made in respect of that person within the period of seven weeks following the date of the interim custody order,

the interim custody order shall cease to have effect.

(4) The Secretary of State may, where a person is required to be detained under an interim custody order, give a direction in writing extending the period of seven weeks mentioned in sub-paragraph (3) above (or that period as extended under this sub-paragraph) for a further period of one week if it is stated in the direction that the report of the Adviser in relation to that person's case has not been received before the sixth day immediately preceding the day on which the interim custody order would, but for the direction, cease to have effect.

(5) Not more than three directions under sub-paragraph (4) above shall be given in respect of any one interim custody order.

(6) A detention order shall be signed by the Secretary of State, and a direction under sub-paragraph (4) above shall be signed by the Secretary of State or a Minister of State or Under Secretary of State.

Supplemental

9.—(1) The Secretary of State may at any time refer the case of a person detained under a detention order to an Adviser and, if so requested in writing in accordance with sub-paragraph (2) below by a person so detained, shall do so within fourteen days beginning with the receipt of the request.

(2) A person detained under a detention order shall not be entitled to make a request for the purposes of sub-paragraph (1) above—

(a) before the expiration of the period of one year beginning with the date of the detention order ; or

(b) within a period of six months from the date of the last notification under sub-paragraph (5) below.

(3) On any reference under this paragraph, an Adviser shall consider the case and report to the Secretary of State whether or not the person's continued detention is necessary for the protection of the public.

(4) Paragraphs 6(3) and 7(2) to (4) above shall apply for the purposes of a reference under this paragraph as they apply for the purposes of a reference under paragraph 5 above.

(5) Where a case is referred to an Adviser in consequence of a request made in accordance with this paragraph, the Secretary of State shall, after receiving the report of the Adviser, reconsider the

case of the person to whom it relates and, if he decides not to release that person, shall notify him of his decision.

Sch. 1

(6) A notification under sub-paragraph (5) above shall be by notice in writing and signed by the Secretary of State.

10.—(1) The Secretary of State may, as respects a person detained under an interim custody order—

- (a) direct his discharge unconditionally ; or
- (b) direct his release (whether or not subject to conditions) for a specified period.

(2) The Secretary of State may, as respects a person detained under a detention order,—

- (a) direct his discharge unconditionally ; or
- (b) direct his release subject to conditions or for a specified period, or both.

(3) The Secretary of State may recall to detention a person released under sub-paragraph (1)(b) or (2)(b) above and a person so recalled may be detained under the original interim custody or detention order, as the case may be.

(4) Where a person is released under sub-paragraph (1)(b) above, any period during which he is not in detention shall be left out of account for the purposes of paragraphs 5(1), 6(2) and 8(3) above.

11.—(1) A person required to be detained under an interim custody order or a detention order may be detained in a prison or in some other place approved for the purposes of this paragraph by the Secretary of State.

(2) A person for the time being having custody of a person required to be detained as aforesaid shall have all the powers, authorities, protection and privileges of a constable.

(3) Subject to any directions of the Secretary of State, a person required to be detained as aforesaid shall be treated as nearly as may be as if he were a prisoner detained in a prison on remand and any power of temporary removal for judicial, medical or other purposes shall apply accordingly.

(4) A person required to be detained as aforesaid who is unlawfully at large may be arrested without warrant by any constable or any member of Her Majesty's forces on duty.

12. Where a person required to be detained under an interim custody order is unlawfully at large, the interim custody order shall not cease to have effect under paragraph 5 or 8 above while he remains at large; and, upon his being taken again into custody, those paragraphs shall have effect as if the date of the interim custody order were that of his being taken again into custody.

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13. Any person who—

- (a) being detained under an interim custody order or detention order, escapes ;
- (b) rescues any person detained as aforesaid, or assists a person so detained in escaping or attempting to escape ;
- (c) fails to return to detention at the expiration of a period for which he was released under paragraph 10(1)(b) or (2)(b) above ; or
- (d) knowingly harbours any person required to be detained under an interim custody order or detention order, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody,

shall be liable on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or to both.

14.—(1) Any document purporting to be an order, notice or direction made or given by the Secretary of State for the purposes of this Schedule and to be signed in accordance with this Schedule shall be received in evidence and shall, until the contrary is proved, be deemed to be duly made or given and signed.

(2) Prima facie evidence of any such order, notice or direction may, in any legal proceedings, be given by the production of a document bearing a certificate purporting to be signed by or on behalf of the Secretary of State and stating that the document is a true copy of the order, notice or direction ; and the certificate shall be received in evidence, and shall, until the contrary is proved, be deemed to be duly made and signed.

15. The Secretary of State may make such payments to persons released or about to be released from detention under this Schedule as he may, with the consent of the Treasury, determine.

Section 21.

SCHEDULE 2

PROSCRIBED ORGANISATIONS

The Irish Republican Army.

Cumann na mBan.

Fianna na hEireann.

The Red Hand Commando.

Saor Eire.

The Ulster Freedom Fighters.

The Ulster Volunteer Force.

Section 27.

SCHEDULE 3

THE NORTHERN IRELAND (EMERGENCY PROVISIONS) REGULATIONS
1978

Title

1. These regulations may be cited as the Northern Ireland (Emergency Provisions) Regulations 1978.

Road traffic

SCH. 3

2. The Secretary of State may by order prohibit, restrict or regulate in any area the use of vehicles or any class of vehicles on highways or the use by vehicles or any class of vehicles of roads or classes of roads specified in the order, either generally or in such circumstances as may be so specified.

Railways

3. The Secretary of State, or any officer of the Royal Ulster Constabulary not below the rank of assistant chief constable, may direct any person having the management of a railway to secure that any train specified in the direction or trains of any class so specified shall stop, or shall not stop, at a station or other place so specified.

Funerals

4. Where it appears to an officer of the Royal Ulster Constabulary not below the rank of chief inspector that a funeral may—

- (a) occasion a breach of the peace or serious public disorder, or
- (b) cause undue demands to be made on Her Majesty's forces or the police,

he may give directions imposing on the persons organising or taking part in the funeral such conditions as appear to him to be necessary for the preservation of public order including (without prejudice to the generality of the foregoing) conditions—

- (i) prescribing the route to be taken by the funeral ;
- (ii) prohibiting the funeral from entering any place specified in the directions ;
- (iii) requiring persons taking part in the funeral to travel in vehicles.

Closing of licensed premises, clubs, etc.

5. The Secretary of State may by order require that premises licensed under the Licensing Act (Northern Ireland) 1971, premises 1971 c. 3 (N.I.) registered under the Registration of Clubs Act (Northern Ireland) 1967 c. 27 (N.I.) 1967 or any place of entertainment or public resort—

- (a) shall be closed and remain closed, either for an indefinite period or for a period, or until an event, specified in the order, or
- (b) shall be closed at a particular time either on all days or on any day so specified.

Section 30.

SCHEDULE 4

THE SCHEDULED OFFENCES

PART I

SUBSTANTIVE OFFENCES

Common law offences

1. Murder, subject to note 1 below.
2. Manslaughter, subject to note 1 below.
3. The common law offence of riot.
4. Kidnapping.
5. False imprisonment.
6. Assault occasioning actual bodily harm, subject to note 1 below.

1861 c. 97.

Malicious Damage Act 1861

7. Offences under section 35 of the Malicious Damage Act 1861 (interference with railway).

1861 c. 100.

Offences against the Person Act 1861

8. Offences under the following provisions of the Offences against the Person Act 1861, subject as mentioned below,—
 - (a) section 4 (conspiracy, etc. to murder) subject to note 2 below;
 - (b) section 16 (threats to kill) subject to note 2 below;
 - (c) section 18 (wounding with intent to cause grievous bodily harm) subject to note 2 below;
 - (d) section 20 (causing grievous bodily harm) subject to note 2 below;
 - (e) section 28 (causing grievous bodily harm by explosives);
 - (f) section 29 (causing explosion or sending explosive substance or throwing corrosive liquid with intent to cause grievous bodily harm);
 - (g) section 30 (placing explosive near building or ship with intent to do bodily injury).

1883 c. 3.

Explosive Substances Act 1883

9. Offences under the following provisions of the Explosive Substances Act 1883—
 - (a) section 2 (causing explosion likely to endanger life or damage property);
 - (b) section 3 (attempting to cause any such explosion, and making or possessing explosive with intent to endanger life or cause serious damage to property);
 - (c) section 4 (making or possessing explosives in suspicious circumstances).

Prison Act (Northern Ireland) 1953

SCH. 4

1953 c. 18 (N.I.).

10. Offences under the following provisions of the Prison Act (Northern Ireland) 1953, subject to note 2 below,—

- (a) section 25 (being unlawfully at large while under sentence);
- (b) section 26 (escaping from lawful custody and failing to surrender to bail);
- (c) section 27 (attempting to break prison);
- (d) section 28 (breaking prison by force or violence);
- (e) section 29 (rescuing or assisting or permitting to escape from lawful custody persons under sentence of death or life imprisonment);
- (f) section 30 (rescuing or assisting or permitting to escape from lawful custody persons other than persons under sentence of death or life imprisonment);
- (g) section 32 (causing discharge of prisoner under pretended authority);
- (h) section 33 (assisting prisoners to escape by conveying things into prisons).

Firearms Act (Northern Ireland) 1969

1969 c. 12 (N.I.).

11. Offences under the following provisions of the Firearms Act (Northern Ireland) 1969—

- (a) section 1(1) (possessing, purchasing or acquiring firearm or ammunition without certificate);
- (b) section 2(1), (2), (3) or (4) (manufacturing, dealing in, repairing, etc., firearm or ammunition without being registered);
- (c) section 3 (shortening barrel of shotgun or converting imitation firearm into firearm);
- (d) section 4(1) (manufacturing, dealing in or possessing machine gun, or weapon discharging, or ammunition containing, noxious substance);
- (e) section 14 (possessing firearm or ammunition with intent to endanger life or cause serious damage to property);
- (f) section 15 (use or attempted use of firearm or imitation firearm to prevent arrest of self or another, etc.);
- (g) section 16 (carrying firearm or imitation firearm with intent to commit indictable offence or prevent arrest of self or another);
- (h) section 17 (carrying firearm, etc., in public place) subject to note 3 below;
- (i) section 19 (possession of firearm or ammunition by person who has been sentenced to imprisonment, etc., and sale of firearm or ammunition to such a person);
- (j) section 19A (possessing firearm or ammunition in suspicious circumstances).

30 c. 5 *Northern Ireland (Emergency Provisions) Act 1978*

SCH. 4

Theft Act (Northern Ireland) 1969

1969 c. 16 (N.I.). 12. Offences under the following provisions of the Theft Act (Northern Ireland) 1969, subject to note 4 below,—

- (a) section 8 (robbery);
- (b) section 10 (aggravated burglary).

1969 c. 29 (N.I.). *Protection of the Person and Property Act (Northern Ireland) 1969*

13. Offences under the following provisions of the Protection of the Person and Property Act (Northern Ireland) 1969—

- (a) section 1 (intimidation);
- (b) section 2 (making or possessing petrol bomb, etc. in suspicious circumstances);
- (c) section 3 (throwing or using petrol bomb, etc.).

Hijacking

1971 c. 70. 14. Offences under section 1 of the Hijacking Act 1971 (aircraft).

1975 c. 59. 15. Offences in Northern Ireland under section 2 of the Criminal Jurisdiction Act 1975 (vehicles and ships).

1976 c. 8. *Prevention of Terrorism (Temporary Provisions) Act 1976*

16. Offences under the following provisions of the Prevention of Terrorism (Temporary Provisions) Act 1976—

- (a) section 9 (breach of exclusion orders);
- (b) section 10 (contributions towards acts of terrorism);
- (c) section 11 (information about acts of terrorism).

S.I. 1977/426
(N.I. 4).

Criminal Damage (Northern Ireland) Order 1977

17. Offences under the following provisions of the Criminal Damage (Northern Ireland) Order 1977, subject to note 2 below—

- (a) Article 3(1) and (3) or Article 3(2) and (3) (arson);
- (b) Article 3(2) (destroying or damaging property with intent to endanger life);
- (c) Article 4 (threats to destroy or damage property);
- (d) Article 5 (possessing anything with intent to destroy or damage property).

S.I. 1977/1249
(N.I. 16).

Criminal Law (Amendment) (Northern Ireland) Order 1977

18. Offences under Article 3 of the Criminal Law (Amendment) (Northern Ireland) Order 1977 (bomb hoaxes), subject to note 2 below.

This Act

19. Offences under the following provisions of this Act—

- (a) section 21;
- (b) section 22;
- (c) section 23;
- (d) paragraph 13 of Schedule 1.

NOTES

SCH. 4

1. Murder, manslaughter or an assault occasioning actual bodily harm is not a scheduled offence in any particular case in which the Attorney General for Northern Ireland certifies that it is not to be treated as a scheduled offence.

2. An offence under—

- (a) section 4, 16, 18 or 20 of the Offences Against the Person Act 1861 c. 100. 1861 ; or
- (b) section 25, 26, 27, 28, 29, 30, 32 or 33 of the Prison Act 1953 c. 18 (N.I.). (Northern Ireland) 1953 ; or
- (c) Article 3, 4 or 5 of the Criminal Damage (Northern Ireland) S.I. 1977/426 Order 1977 ; or (N.I. 4).
- (d) Article 3 of the Criminal Law (Amendment) (Northern S.I. 1977/1249 Ireland) Order 1977. (N.I. 16).

is not a scheduled offence in any particular case in which the Attorney General for Northern Ireland certifies that it is not to be treated as a scheduled offence.

3. An offence under section 17 of the Firearms Act (Northern 1969 c. 12 (N.I.). Ireland) 1969 is a scheduled offence only where it is charged that the offence relates to a weapon other than an air weapon.

4. Robbery and aggravated burglary are scheduled offences only where it is charged that an explosive, firearm, imitation firearm or weapon of offence was used to commit the offence ; and expressions defined in section 10 of the Theft Act (Northern Ireland) 1969 1969 c. 16 (N.I.). have the same meaning when used in this note.

PART II

INCHOATE AND RELATED OFFENCES

20. Each of the following offences, that is to say—

- (a) aiding, abetting, counselling, procuring or inciting the commission of an offence specified in Part I of this Schedule (hereafter in this paragraph referred to as a “substantive offence”);
- (b) attempting or conspiring to commit a substantive offence ;
- (c) an offence under section 4 of the Criminal Law Act 1967 c. 18 (N.I.). (Northern Ireland) 1967 of doing any act with intent to impede the arrest or prosecution of a person who has committed a substantive offence ;
- (d) an offence under section 5(1) of the Criminal Law Act (Northern Ireland) 1967 of failing to give information to a constable which is likely to secure, or to be of material assistance in securing, the apprehension, prosecution or conviction of a person for a substantive offence,

shall be treated for the purposes of this Act as if it were the substantive offence.

32 c. 5 *Northern Ireland (Emergency Provisions) Act 1978*

SCH. 4

PART III

EXTRA-TERRITORIAL OFFENCES

1975 c. 59. 21. Any extra-territorial offence as defined in section 1 of the Criminal Jurisdiction Act 1975.

Section 35(2).

SCHEDULE 5

TRANSITIONAL PROVISIONS AND SAVINGS

1.—(1) Subject to sub-paragraph (4) below, any instrument made, any direction or authorisation given or any other thing done under any enactment repealed by this Act or any order, rules or regulations made under any such enactment shall, so far as it could have been made, given or done under any provision of this Act have effect as if it had been made, given or done under that provision.

1973 c. 53. (2) The Northern Ireland (Emergency Provisions) Regulations 1973 (set out in Schedule 3 to the Northern Ireland (Emergency Provisions) Act 1973) are an enactment repealed by this Act and, accordingly, the reference in sub-paragraph (1) above to anything done under an enactment repealed by this Act includes a reference to anything done under those Regulations.

(3) In sub-paragraph (1) above, references (however expressed) to things done under an enactment repealed by this Act shall be construed, in relation to the Northern Ireland (Emergency Provisions) Act 1973, as including references to things which, by virtue of section 31(5) of that Act, fell to be treated as if done under that Act.

(4) Sub-paragraph (1) above shall not be construed as saving the provisions specified in Part II of Schedule 6 to this Act.

2. Any enactment, instrument or document referring to any enactment repealed by this Act shall, so far as may be necessary for preserving its effect, be construed as referring, or as including a reference, to the corresponding provision of this Act.

3. Nothing in this Act shall affect the enactments repealed by Parts I and II of Schedule 6 to this Act in their operation in relation to offences committed before the commencement of this Act.

S.I. 1977/1252
(N.I. 19).

4. Until Article 4 of the Legal Aid, Advice and Assistance (Northern Ireland) Order 1977 comes into operation, section 3(3) above shall have effect with the substitution of "defence" for "criminal aid".

5.—(1) Paragraph 14 of Schedule 1 to this Act shall have effect in relation to a document purporting to be an order, notice or direction made or given by the Secretary of State for the purposes of Schedule 1 to the Northern Ireland (Emergency Provisions) Act 1973 or Part I of Schedule 1 to the 1975 Act and to be signed in accordance with the said Schedule or Part as it has effect in relation to a document referred to in that paragraph.

SCH. 5

(2) In this paragraph "the 1975 Act" means the Northern Ireland 1975 c. 62. (Emergency Provisions) (Amendment) Act 1975.

6. Nothing in the foregoing paragraphs shall be construed as affecting the operation of section 38 of the Interpretation Act 1889 1889 c. 63. (effect of repeals).

SCHEDULE 6

Section 35(3).

ENACTMENTS REPEALED

PART I

ACTS, ETC.

Chapter or Number	Short Title	Extent of Repeal
1973 c. 53.	The Northern Ireland (Emergency Provisions) Act 1973.	Sections 2 to 4 and 6 to 8. Sections 10 to 18. Section 19(1) to (7). Sections 20 and 21. Sections 23 to 27. In section 28(1), the definitions, except that of "enactment". Section 29. In section 30, subsections (1) to (3), in subsections (4) and (5), the words "whether" and "or subsequently" and subsections (6) and (7). In section 31, subsections (2), (3) and (5) and in subsection (7), the words "for the time being in force", paragraph (b) and the word "and" preceding it. Schedules 2 to 5. The whole Act.
1974 c. 33.	The Northern Ireland (Young Persons) Act 1974.	

SCH. 6

Chapter or Number	Short Title	Extent of Repeal
1975 c. 59.	The Criminal Jurisdiction Act 1975.	In section 4(1), the words from the beginning to "and". In Schedule 2, paragraphs 1, 2(1) and 3.
1975 c. 62.	The Northern Ireland (Emergency Provisions) (Amendment) Act 1975.	Sections 2 to 5. Section 6(1) and (2)(a). Section 8. Section 9(1) and (3). Sections 10 to 13. In section 14, the words from the beginning to "and accordingly". Sections 15 to 19. Sections 21 and 22. Section 23(2). In Schedule 1, Part I. Schedules 2 and 3. In Schedule 3, in paragraph 8, the words from "and accordingly" onwards. Article 13(5).
1976 c. 8.	The Prevention of Terrorism (Temporary Provisions) Act 1976.	
S.I. 1977 No. 426 (N.I. 4).	The Criminal Damage (Northern Ireland) Order 1977.	
1977 c. 34.	The Northern Ireland (Emergency Provisions) (Amendment) Act 1977.	The whole Act.

PART II

ORDERS

Number	Short Title	Extent of Repeal
S.I. 1973 No. 1880.	The Northern Ireland (Emergency Provisions) Act Proscribed Organisations (Amendment) Order 1973.	The whole Order.
S.I. 1974 No. 864.	The Northern Ireland (Emergency Provisions) Act 1973 (Amendment) Order 1974.	In Article 3, the words from the beginning to "of the Act)".
S.I. 1974 No. 1212.	The Northern Ireland (Emergency Provisions) Act 1973 (Continuance) Order 1974.	The whole Order.
S.I. 1974 No. 2162.	The Northern Ireland (Various Emergency Provisions) (Continuance) Order 1974.	The whole Order.
S.I. 1975 No. 1059.	The Northern Ireland (Various Emergency Provisions) (Continuance) Order 1975.	The whole Order.

SCH. 6

Number	Short Title	Extent of Repeal
S.I. 1975 No. 1609.	The Northern Ireland (Emergency Provisions) Act 1973 (Amendment) Order 1975.	The whole Order.
S.I. 1975 No. 2214.	The Northern Ireland (Various Emergency Provisions) (Continuance) (No. 2) Order 1975.	The whole Order.
S.I. 1976 No. 1090.	The Northern Ireland (Various Emergency Provisions) (Continuance) Order 1976.	The whole Order.
S.I. 1976 No. 2238.	The Northern Ireland (Various Emergency Provisions) (Continuance) (No. 2) Order 1976.	The whole Order.
S.I. 1977 No. 1171.	The Northern Ireland (Various Emergency Provisions) (Continuance) Order 1977.	The whole Order.
S.I. 1977 No. 1265.	The Northern Ireland (Emergency Provisions) Act 1973 (Amendment) Order 1977.	The whole Order.
S.I. 1977 No. 2142.	The Northern Ireland (Various Emergency Provisions) (Continuance) (No. 2) Order 1977.	The whole Order.

APPENDIX B

AMNESTY INTERNATIONAL REPORT ON HUMAN RIGHTS VIOLATIONS IN NORTHERN IRELAND

[From the Congressional Record, July 19, 1978]

(Inserted by Hon. Mario Biaggi)

The Amnesty International inquiry was conducted between November 28 and December 6, 1977. The mission consisted of a Dutch lawyer and Danish doctor, a member of Amnesty International's secretariat. The mission was later joined by a second doctor. Amnesty obtained direct testimony from 52 persons who alleged they were mistreated while in the custody of the Royal Ulster Constabulary, which serves as the main auxiliary force for British forces in Northern Ireland. Amnesty also examined medical records and other corroborative data involving some 26 other cases totaling 78 cases. It is the Ad Hoc Committee's intention to have all 78 cases printed in the CONGRESSIONAL RECORD beginning with the case which I will insert. A number of colleagues have joined me and will also insert other cases.

The background of the Amnesty report was an increasing number of complaints being registered against the RUC since 1975. This was in direct relationship to the increased numbers of suspected terrorists which were being apprehended and interrogated by the RUC. Most of these suspects were brought before nonjury courts known as "Diplock courts" which were established by the Emergency Provisions Act of 1973. A startling statistic provided by the London Sunday Times was that 94 percent of the cases brought before the Diplock courts resulted in convictions. More revealing is the fact that between 70 and 90 percent of the convictions are based on "admissions of guilt"—self-incriminating statements—made to the police during interrogation.

These questionable judicial processes led to an ever-rising number of complaints of maltreatment being filed. Between 1975 and 1977, the complaints against the RUC soared from 184 to 515. In addition to an increasing number of complaints, those reporting complaints began to encompass all sides of the dispute from Catholics to Protestants, from the extreme political parties to the moderate SDLP. In March 1977, the BBC featured two cases of prisoners who alleged maltreatment at Castlereagh the remaining elements of the Amnesty background, I will now insert into the Record.

[The information follows:]

CHAPTER I—BACKGROUND

POLITICAL BACKGROUND

Since the outbreak of serious civil unrest in Northern Ireland in 1969, British security forces have been engaged in an attempt to suppress armed insurgency and terrorism carried out by both Republican groups, notably the Provisional Irish Republican Army, and "Loyalist" groups such as the Ulster Volunteer Force. A large number of civilian deaths have resulted from confrontations between the security forces and terrorists or suspected terrorists, and action by terrorists organizations including sectarian murders, sniping, bombing, and fires started by bombs. In 1972, 467 persons died in such incidents in the province, and in each succeeding year until 1977 the totals were between 200 and 300. In 1977 the level dropped, but even in that year 111 violent deaths took place, including 68 civilians and 43 members of the security forces (the British Army, the Royal Ulster Constabulary, and the Ulster Defence Regiment) who were shot or killed in bomb attacks. In addition to the deaths, over 14,000 civilians are believed to have been injured since the present violence began. The majority of the civilian injuries were sustained in bombing or shooting incidents, but deliberate maiming, carried out by both Republican and "Loyalist" paramilitary groups as a punishment or disciplinary measure, is also common. This usually takes the

form of shattering one or both of the victim's kneecaps with bullets or an electric drill, or, more recently, the dropping of heavy concrete blocks on the limbs, causing fractures. During the first eleven months of 1977, over 116 such "knee-cappings" occurred, mostly carried out by the Provisional Irish Republican Army.

Amnesty International condemns the use of political murder by the paramilitary groups involved, and their practice of deliberate maiming of persons in their temporary custody as a device of political intimidation and control.

Since the ending of detention without trial in 1975, and the release of the last detainees in December of that year, British government policy in dealing with terrorism has been to bring persons charged with terrorist offences before the special non-jury courts ("Diplock Courts") which were set up by the Emergency Provisions Act, 1973. Power to detain remains but is inoperative. Police detention with regard to scheduled offences has been extended to three days (Emergency Provisions Act, 1973), or a maximum of seven days with the written authorization of the Secretary of State for Northern Ireland (Prevention of Terrorism Act, 1974 and 1976). By securing convictions before the courts, the British authorities hope to remove networks of terrorists and members of para-military organizations from the community, and thus to foster a gradual return to a normal state of law and order. The authorities have also sought to increase the effectiveness of the Royal Ulster Constabulary by enhancing its credibility among members of the Roman Catholic community. In the past this credibility has been difficult to achieve, due largely to the fact that the Royal Ulster Constabulary (RUC) is manned mainly by Protestants. * * *

The force's impartial image in this regard was enhanced by the role it played in breaking the illegal "Loyalist" strike called by Protestant extremists in May 1977. If the RUC can win the confidence of the Roman Catholic community, the British authorities reason, then that community will cease to shelter and be intimidated by Republican para-military groups. Simultaneously, should the RUC achieve its aim of becoming a force acceptable to both sides of the sectarian divide, and able to operate normally even in traditionally "Republican" areas of the province, this would in turn allow the British government to reduce its commitment of regular armed forces to Northern Ireland. At the same time, in the British government's view, the RUC must maintain its success rate against the Provisional IRA, partly because any failure to do so might lead to a revival of vigilante action or large-scale violence by "Loyalist" para-military groups, for instance by sectarian assassination.

In pursuing this policy, the RUC has been, during 1976 and 1977, successful in bringing charges against numerous individuals suspected of terrorist involvement. During 1976, 1,602 persons were charged with scheduled offences, that is, offences set out in the schedule to the Emergency Provisions Act, and related to terrorist acts, such as murder, attempted murder, firearm and explosives offences, armed robbery, etc., and the figure for 1977 was 1,545. A number of the murder and attempted murder charges preferred related to crimes dating back to 1971. In a statement to the British House of Commons on 8 December 1977, Mr. Roy Mason, Secretary of State for Northern Ireland, stated that so far that year 316 people had been sentenced to 10 years' imprisonment or more on conviction for scheduled offences on indictment, compared with 214 in the whole of 1976.

An important aspect of this record of charge and conviction is the high conviction rate of persons charged with terrorist offences. According to a report in the London Sunday Times of 23 October 1977, researches undertaken by the Law Department of Queen's University, Belfast, showed that 94 percent of the cases brought before the Diplock Courts resulted in conviction. Between 70 percent and 90 percent of the convictions are based wholly or mainly on admissions of guilt (self-incriminating statements) made to the police during interrogation. Only in a minority of cases is other evidence—forensic evidence, intelligence evidence, or testimony of witnesses—produced in court to secure a conviction. Forensic evidence is rare, and in the current situation in Northern Ireland the use of witnesses is restricted by the fear of intimidation and reprisal. Intelligence evidence can, by its nature, hardly ever be used in court.

ALLEGATIONS OF MALTREATMENT

Statistics of complaints against the security forces in Northern Ireland have always been high (between August 1971 and November 1974 there were 1,105 complaints of assault and maltreatment lodged against the RUC, and 1,078

against the Army). There were signs of an increase in complaints against the RUC in 1975, when detention, without trial was phased out. In part, this was a reflection of the increased number of suspected terrorists interviewed by the RUC. In 1975 1,797 suspects were interviewed, of whom 184 made complaints; in 1976 the figures were 3,042 and 322 respectively, and in the first eleven months of 1977 3,444 and 515. Prior to 1977 almost all complaints of assault or maltreatment during interview reportedly came from Republican sympathizers or bodies closely associated with the Republican movement; however, especially since the failure of the "Loyalist" strike in May 1977, an increasing number of complaints have come from Protestant sources.

In September 1976 the Northern Ireland Civil Rights Association (NICRA) claimed a number of men, all Roman Catholic had been maltreated during interrogation at Cookstown RUC Station and Springfield Road RUC Station, in January and February 1975 and June 1976. In March 1977 the British Broadcasting Corporation (BBC) television program "Tonight" featured two cases of Roman Catholics from the Enniskillen area who alleged maltreatment in January 1977 at Castlereagh Police Holding Centre, East Belfast, which was to become the focus of many later allegations of maltreatment. During the same month the Social Democratic and Labour Party (SDLP) constituency representatives accused the RUC of physically and mentally ill-treating people taken into custody for questioning, and said that there were grounds for believing that illegal police pressure was approved at the highest level. In July 1977 a member of the SDLP claimed that there was "overwhelming evidence" of involvement of plainclothes detectives in brutalities, and in the following months Dr. Thomas Fee, Archbishop of Armagh and Primate of All Ireland, attacked alleged "brutalities and tortures" by members of the security forces.

Allegations of maltreatment during interrogation, especially at Castlereagh Holding Centre, continued to be reported in the Republican press throughout the summer and early autumn of 1977. In October NICRA called for a conference of all interested groups to discuss ways of ending the alleged maltreatment. Simultaneously the Protestant Ulster Defense Association reported that it had established a "thick file of cases of its members who had been maltreated". During the same month the SDLP renewed its call for an inquiry into the allegations, and it was reported that seven committee members representing the 42-member Police Surgeons Association had met to discuss the allegations, and sought a meeting with the Chief Constable of the RUC to express their concern. At the end of the month a television program by the British Thames Television Company, entitled "Inhuman and Degrading Treatment?" featured ten cases—eight Roman Catholics and two Protestants—who alleged maltreatment at the Castlereagh Centre between February and October 1977.

Early in November 1977 a meeting of most of the approximately thirty solicitors handling cases before the Diplock Courts decided to set up a three-man committee to collate evidence of alleged brutality, and wrote to the Secretary of State expressing their concern at the allegations, and stating that in their view:

"... ill-treatment of suspects by police officers, with the object of obtaining confessions, is now common practice, and that this most often, but not always, takes place at Castlereagh RUC station and other police stations throughout Northern Ireland."

Also in November, it was reported that the "Loyalist"-oriented Ulster Citizens' Civil Liberties Advice Centre (UCCLAC) had produced a forty-minute videotape reconstructing types of brutalities and other abuses allegedly occurring at the Castlereagh Centre. In early December, at the time of the Amnesty International mission to Northern Ireland, the clerical leaders of the four main Christian denominations in the province made a public statement to the effect that they were "disturbed" that "serious" allegations of ill-treatment were being made. Shortly afterwards a representative of the Northern Ireland Police Authority, the independent civilian body which oversees the police, stated that the authority had "recently" had talks with the Chief Constable of the RUC, "about finding new ways of eliminating the cause of justified complaints". Others who have publicly expressed concern at the allegations during the course of 1977 include doctors, lawyers, members of municipal authorities and members of parliament.

The ill-treatment alleged during 1977 included both mental and physical maltreatment: Physical methods alleged included: beatings, attempted strangulation, pressure to sensitive points of the body, bending of limbs, prolonged

standing or squatting in awkward positions, prolonged physical exercises, and burning with cigarettes. Mental pressures alleged included: prolonged oppressive questioning by teams, threats of death and of imprisonment, and threats to the family of the suspect, stripping, and verbal abuse and humiliation.

Many of the allegations referred to the Castlereagh Centre, but others concerned Springfield Road RUC Station, Belfast; Cookstown, Coalisland, Dungannon, and Lurgan RUC Stations; and Strand Road RUC Station, Londonderry.

RESPONSE BY THE AUTHORITIES TO THE ALLEGATIONS

One aspect of the response by the RUC and the authorities to the allegations mentioned above has been to describe them as part of a propaganda campaign against the RUC, designed to defeat the force's aim of achieving an impartial reputation throughout the community (thus reducing its effectiveness against paramilitary groups) and to justify the assassination of its members by terrorist organizations. In addition, the RUC views the allegations as reflecting attempts by individuals to obtain acquittal before the courts on the grounds that their self-incriminating statements—often the only evidence against them which can be produced in court—were made under duress. The RUC also alleges that some prisoners inflict wounds on themselves, either as part of a general plan to discredit the force by producing medical evidence of "maltreatment", or as an attempt on the part of individual terrorists to exculpate themselves in the eyes of other members of their organizations by claiming that information was forced out of them by intolerable physical pressure. The authorities have also pointed to the provision for medical examination of suspects on arrest and on release, and at other times during their detention in police custody, and the comprehensive system for investigating complaints against the police which exists in Northern Ireland.

In his report for the year 1976, the Chief Constable of the RUC stated that "terrorist organizations [had] adopted a deliberate policy of manufacturing allegations or contriving incidents, including self-inflicted injury" in order to discredit the police or to cast doubt on statements of confession when cases are tried in court. In June 1977 the Chief Constable asserted that the increase in the number of brutality allegations against the force was an indication of the growing police success in combating terrorism. He stated that there was clear evidence that some of the allegations were manufactured, and that some prisoners were injuring themselves to throw blame on the RUC. In a public statement, he affirmed that "In recent months" he had issued instructions to the force to prevent self-inflicted injuries by prisoners. He mentioned instances of prisoners wounding themselves with "eating utensils, a nail, a tin of lemonade, or by butting their head against a wall or smashing a window." The statement added that complaints had been lodged during the first quarter of the year on behalf of 112 of the 904 suspected terrorists detained. Inquiries were not yet complete in all cases, but at that time scrutiny by the Director of Public Prosecution (DPP) had not produced evidence to justify a prosecution against any police officer for alleged ill-treatment, the statement said. During the same month a Belfast judge claimed that it was the "common, indeed the universal policy of members of the IRA to fabricate allegations" of ill-treatment.

Following renewed allegations in the following months, the Chief Constable replied in October 1977 to the effect that, of 1,559 persons interviewed at the Castlereagh Center during the first nine months of 1977, complaints were made by or on behalf of 215. Investigation of these cases was not yet completed, but of the complaint cases to that date submitted to the DPP in respect of the whole of the province during 1977, the DPP directed a prosecution for alleged assault against a prisoner in only one case, not relating to Castlereagh. Later in October the Chief Constable replied to the Thames television film (mentioned above) by stating,

"No Chief Constable in charge of thousands of men can say without doubt that no member of the Force will fall below the high standards set. But, let there be no doubt that the policy in this Force is enforcement of the law within the law. Every member of the Force knows of this policy, which is being widely propagated, and every member of the Force knows that he would offend against that principle at this peril."

The Chief Constable did not rule out the possibility that "at times a police officer will be tempted to overstep the mark" but also pointed out that three other

possibilities existed: that the suspect might refuse medical examination on arrest, thus taking bruises and other marks into police custody; that the suspect may injure himself—and in documented instances had done so; and that the suspect might deliberately attack the interviewing officer in order to provoke a situation in which he had to be restrained. The Chief Constable concluded that "there is no policy or toleration of ill-treatment in this Force. Quite the contrary."

Following the showing of the television program, the Northern Ireland Office wrote to the Independent Broadcasting Authority to complain about certain aspects of the film, and the London Daily Telegraph reported that Republican sources had stated that IRA members were receiving "prizes" in the form of cigarettes and drink if injuries they inflicted on themselves while in police custody justified complaints against the police. The RUC has since claimed that suspects have injured themselves by cutting themselves with pins concealed in their clothing, rubbing areas of their bodies to produce inflammation, and punching themselves in the eyes. Renewed instructions from the Chief Constable to members of the RUC to guard against such incidents were issued on 10 November 1977.

In the view of the RUC, the system of medical examinations now in force is as effective as can be hoped in protecting both suspects from possible maltreatment and the police from malicious allegations. On arrival in police custody each suspect is offered a medical examination by a police doctor (usually a general practitioner under contract to the Northern Ireland Police Authority), who also offers him an examination on release, or before transfer to court for charging prior to being remanded in custody. The consent of the suspect is necessary before these examinations can take place. The suspect may request to see the police doctor at any time; at the two holding centers at Castlereagh in Belfast and Gough Barracks in Armagh, police doctors are on duty from nine in the morning until five in the evening each day, and may be called in outside those hours at the request of the suspect or if interrogation is taking place. According to instructions issued by the Chief Constable in September 1977, arrested persons should be allowed to see a doctor of their own choice at "a suitable time" during their detention on the request of their solicitors, near relatives, or "genuine representatives." On being charged, accused persons are examined by a member of the Police Surgeons Association, and on being remanded in custody they are examined by a prison doctor. The implication of this system of medical checks in terms of the substantiation or disproving of complaints of assault by RUC personnel are examined later in this report.

The RUC has further made the point that, while the force itself is arguably under strong pressure (for reasons mentioned earlier in this chapter) to obtain statements from terrorist suspects, such suspects as do make statements have a very powerful motive for alleging in court that the statement was induced by torture, inhuman or degrading treatment, and, if possible, producing apparently corroborative medical evidence. Under Section 6 of the Emergency Provisions Act, it is stated that a statement shall be ruled inadmissible if,

"... *prima facie* evidence is adduced that the accused person was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement . . ."

Once such a *prima facie* case is made, the statement will be disregarded unless the prosecution is able to rebut such *prima facie* evidence to the satisfaction of the court. The standard of proof required to satisfy the court of the rebuttal is that of criminal cause—i.e., beyond reasonable doubt. The RUC would argue that rebuttal of *prima facie* evidence in these circumstances is extremely difficult, and that this means that when a self-incriminating statement is the only evidence against the accused, the motivation for the accused to claim maltreatment is extremely strong.

These two aspects of the question—medical examinations and the implications of allegations of maltreatment made before the courts—are dealt with in more detail in Chapters III and IV but are mentioned here in order to place in context the material which follows—especially that in Chapter III.

In response to a steady outcry for an investigation, Amnesty commenced theirs on November 28. An overview of their inquiry I will now place into the Record. Most of the attention was directed at the Castlereagh Barracks, but other facilities were examined.

CHAPTER II.—THE AMNESTY INTERNATIONAL MISSION

The allegations mentioned in the previous chapter are of concern to Amnesty International under article 1(c) of its statute, which states that one of the objects of Amnesty International shall be to oppose.

"... by all appropriate means ... torture or other cruel, inhuman or degrading treatment or punishment of prisoners or other detained or restricted persons whether or not they have used or advocated violence."

During 1976, Amnesty International received a number of allegations of maltreatment by security forces in Northern Ireland, and requested an official investigation into two such allegations, one involving three Belfast Republicans who alleged that they had been brutally maltreated after being wrongfully detained by members of the RUC, the other involving imprisoned members of the Ulster Defense Association who alleged that they were beaten with clubs by warders in Long Kesh Prison. The authorities informed Amnesty International that they were satisfied with the results of internal investigations into the allegations in both cases.

In the light of allegations which continued to reach the organization, the International Executive Committee of Amnesty International decided to send a research mission to Northern Ireland. Due to the fact that the majority of allegations reaching Amnesty International referred to persons in the custody of the RUC, the terms of reference of the mission were restricted to investigating such allegations, rather than more general charges of human rights violations. On 8 November 1977 the Secretary General of Amnesty International, Mr. Martin Ennals, wrote to the Secretary of State for Northern Ireland, Mr. Roy Mason, regarding the proposed mission. The letter requested that the delegation be able to meet with Mr. Mason and other appropriate authorities, particularly with the Chief Constable of the RUC, Mr. Kenneth Newman. Subsequently Amnesty International received a reply, dated 15 November, from Mr. Mason to the effect that his department had been instructed to cooperate with the mission "as far as it reasonably can" and "to help the mission where possible to meet those outside the Royal Ulster Constabulary who are concerned with these matters". The letter indicated that it would not be possible for the authorities in Northern Ireland to discuss details of individual allegations which were under investigation through the normal complaints machinery, or had been determined under the statutory procedures. However, Mr. Mason stressed that he wished the mission to learn as much as possible about the safeguards employed to ensure that suspects were correctly treated, and about procedures used to investigate complaints of ill-treatment. Amnesty International also received notification that the Chief Constable of the RUC would meet the mission.

Prior to the mission Amnesty International also contacted civil rights organizations, lawyers, doctors, and other individuals who would be in a position to present the mission with written and oral evidence and place it in contact with complainants.

The mission, consisting of a Dutch lawyer, a Danish doctor, and a member of Amnesty International's International Secretariat, visited Northern Ireland from 28 November to 6 December 1977. It was joined on 1 December by a second Danish doctor. The team interviewed organizations and individuals in Belfast, Dungannon, and Londonderry. Most of those interviewed were complainants (further details of this category of witnesses is given later in this chapter.) In addition to speaking with the complainants and a number of organizations concerned with civil liberties, the mission met lawyers, doctors, politicians at the local and national level, and, among the authorities, the Deputy Secretary of State, a representatives of the Attorney-Generals office, the Chief Constable and a Deputy Chief Constable of the RUC, the head of the RUC Complaints Branch and members of his staff, members of the Police Federation of Northern Ireland, and the Director and Deputy Director of Public Prosecutions. In addition, it met the Chairman, Secretary, and other members of the Northern Ireland Police Authority, doctors under contract with the Authority, members of the Police Surgeons Association, and the head of the Police Complaints Board. The mission was also offered, and accepted, the opportunity to visit Castlereagh Police Holding Centre in Belfast. Two members of the mission visited the reception, detention, and interrogation blocks of the centre for a period of approximately three quarters of an hour on 6 December 1977. They spoke to uniformed

staff, and were shown unoccupied offices, cells, and interrogation rooms, but (as previously stipulated by the authorities) were not able to speak to individual suspects being held at the time of the visit. A similar offer of a visit in regard to Gough Barracks, Armagh, was declined due to lack of time.

During the mission, the Amnesty International delegates obtained direct testimony from 52 persons who alleged that they had been maltreated while in police custody. In all instances the mission undertook that names of individual complainants it interviewed would not be revealed—both because in some cases individuals had actions against the police for alleged maltreatment still before the courts, and in order to protect the individuals concerned. Doctors interviewed by the mission also expressed the wish to remain anonymous. Complete records of interviews are however in the possession of Amnesty International. The delegates also examined medical reports relating to 13 of the 52 cases, and 5 of the 52 agreed at the request of the delegates to be further examined in greater detail by the medical members of the mission. In addition to obtaining testimony directly from the above-mentioned persons, the delegates also examined medical reports and other apparently corroborative data in relation to a further 26 cases of alleged maltreatment.

Thus, overall, a total of 78 cases were examined in some detail by the mission. Amnesty International's findings with regard to these cases are described in Chapter III of this report. Further cases of alleged maltreatment were reported to the delegates, but the information given in these cases was either insufficient or they fell outside the terms of reference of the mission. These cases are not included in this report.

The 78 cases referred to above concern persons who were arrested, mostly during 1977, on suspicion of involvement in terrorism. It should be emphasized that these cases represent only a small proportion of the total of individuals interviewed by the RUC as terrorist suspects—in 1977, for instance, 3,444 suspects were interviewed, and in 1976 3,042. It should also be noted that the mission was only able to interview directly individuals who were at liberty—that is, either those who were not charged (the large majority of those interviewed) or against whom charges had been dropped or who had been acquitted, or who were free on bail pending trial. The sample was random in the sense that it was not pre-selected by Amnesty International. On the other hand, most of those interviewed met members of the mission by arrangement with their lawyers or relatives, or with various organizations such as the Association for Legal Justice, the Northern Ireland Civil Rights Association, and the Ulster Citizens' Civil Liberties Advice Centre.

In the large majority of the cases examined the alleged victims were from the Roman Catholic community. This reflects the fact that most persons arrested on suspicion of involvement in terrorism are from that community—a situation which in turn reflects the fact that by far the most active para-military organization in Northern Ireland at present is the Provisional Irish Republican Army, although "Loyalist" paramilitary groups are also active. The mission took steps to ensure that it interviewed complainants from both Protestant and Roman Catholic communities.

In the majority of the cases examined the alleged victims of maltreatment had been arrested under the Emergency Provisions Act, which empowers the police to detain persons for up to three days without charge. A number of persons, however, had been held under the Prevention of Terrorism Act, which allows police to hold suspects for up to seven days without charge. Of the 78 cases examined, 36 persons were detained for three days, 21 for between four and seven days, ten for less than three days, and in the remaining cases the length of police detention is not known to Amnesty International.

41 of the 78 persons whose allegations are described in this report were released without charge after their detention in police custody. One was extradited, 22 persons were brought before a magistrate after their detention in police custody and charged with offences relating to terrorism; of these, two subsequently had all charges dropped. In most of the remaining cases trial is still pending. In the remaining 14 cases it is not known to Amnesty International whether the persons in question were charged.

The cases examined in this report cover a wide geographical area of Northern Ireland and include persons from rural and urban areas. Although in many cases examined by the mission the arrested persons were first taken to local police stations, in the majority of cases examined the persons involved were taken to

Castlereagh Police Holding Centre at some stage during their period in police custody, 58 of the 78 cases examined alleged that they were maltreated at Castle-reagh by plainclothes detectives. No uniformed staff at Castlereagh were involved in the alleged maltreatment. In the remaining cases it was alleged that maltreatment had occurred in a number of local RUC stations, but not by uniformed police officers. These include Cookstown RUC Station, Strand Road RUC Station (Londonderry), Omagh RUC Station, Lurgan RUC Station, Springfield Road RUC Station, (Belfast) and Newry RUC Station in Armagh. While a number of allegations of brutality by army personnel towards persons not under arrest were reported to the mission, these do not fall within the mandate of this report, which concerns persons arrested and allegedly maltreated by members of the RUC.

The findings of the Amnesty International report are shocking. The report is broken down in the following fashion:

Thirty-nine cases interviewed by Amnesty on whom medical evidence was unavailable.

Anywhere from 6 to 10 different forms of maltreatment were cited.

The most common were 23 of 39 cited beatings to the body and extremities, while 19 out of 39 endured direct beatings to the head.

Twenty-six cases on which medical evidence was available and who were not interviewed by Amnesty.

Seven different forms of maltreatment were cited here. The most common again was beating, in 22 of 26 cases.

Nine cases on which medical evidence was available and who were interviewed by Amnesty.

Here, all nine alleged direct beatings to the head and medical evidence did show signs.

The complete chapter 3 of the Amnesty report entitled "Case Studies of Alleged Maltreatment" I will now place in the record.

[The information follows:]

CHAPTER III.—CASE STUDIES OF ALLEGED MALTREATMENT

This chapter deals with the evidence on 78 persons regarding whom there are allegations of maltreatment by Royal Ulster Constabulary personnel, and whose cases were examined by the Amnesty International mission. The degree of evidence available varied throughout this sample of cases. In 39 instances the mission was able to interview individuals on whom no corroborative medical evidence was available. In 26 instances the delegates received documentary medical evidence relating to individuals whom they were not able to interview. In 13 cases the delegates interviewed persons on whom medical evidence was available.

One of the 39 cases on whom medical evidence was not available, and 4 of the 13 cases with medical evidence, were selected by the mission, for more detailed examination by the medical delegates. The results of the examination of these various categories of evidence are given in this chapter of the report.

The evidence presented to the mission in interviews and statements reflected, of course the account given by each complainant. In the absence of access to the reports of police doctors who examined the complainants, and due to the fact that the mission was unable to discuss individual cases with the authorities, this was inevitable. For precisely this reason, and because of the controversy surrounding allegations of maltreatment in Northern Ireland (see Chapter I), this report places great emphasis on medical evidence, and in particular on the reports of doctors who examined the complainants after the alleged maltreatment.

Individual cases illustrative of the evidence received by the mission are given in the annexes of this chapter for all categories save that on which no medical evidence was available.

Thirty-nine persons interviewed by the mission on whom medical evidence was not available to the delegates:

The persons interviewed were between the ages of 13 and 60, the majority being between 18 and 22. Five of them had been detained in 1976, six during the first half of 1977 and 28 during the latter half of 1977. The large majority of allegations of maltreatment concerned plainclothes detectives of the RUC. The army was mentioned in a few cases and the uniformed RUC in one case only. The

sample consists of 26 men and 13 women, from both rural and urban areas, and includes both Protestants and Roman Catholics, although the latter predominate. Of the 39, 30 were released without charge.

Types of maltreatment alleged varied only slightly throughout the sample and can be divided into the following subgroups:

A. PSYCHOLOGICALLY EXHAUSTING PROCEDURES

Six individuals complained of prolonged interrogation sessions with aggressive questioning.

B. PHYSICALLY EXHAUSTING PROCEDURES

Nineteen individuals complained of this, the most common allegations being that they were made to stand at a wall for long periods of time (cases varied from 15 minutes to 4-5 hours continuously); to stand with the arms lifted for prolonged periods; to sit with the back against the wall as if sitting on a chair; running on the spot for lengthy periods.

C. THREATS

23 persons alleged threats. Three women said they had been threatened with rape and in two cases the light in the interview room was allegedly switched off just after the threat was made. Other threats were alleged to have comprised threats of beatings, threats of being killed after release, threats of long prison sentences, threats to their families and threats of being left in a hostile sectarian area. Frequently it was alleged that different types of threats were used during the same interview period.

D. BEATINGS TO THE BODY AND EXTREMITIES

23 persons alleged that this had happened during their interrogation sessions. It was alleged that the beatings had been inflicted with closed fists, as well as by banging the victim against a wall. Allegations included kicking of the body and genitals and squeezing of the genitals.

E. DIRECT BEATINGS TO THE HEAD

19 persons alleged that they had been beaten about the head either with the open hand or closed fist, or by having their head banged against a wall.

F. HUMILIATION

Ten people alleged humiliating treatment, such as being forced to remove their clothes and, in the case of some women, having their skirts lifted. One woman alleged that she had not been allowed to change her sanitary napkin during her menstruation.

G. OTHER METHODS

39 persons alleged other types of maltreatment such as wristbending (4 persons), choking (3 persons), sleep deprivation (2 persons), hooding (3 persons), and being burnt with a cigarette (1 person). The three cases of hooding consist of 2 persons who alleged that plastic bags were placed over their heads and a third who alleged that his coat was pulled over his head. The majority of the others complained of having been shaken and having had their hair pulled.

In all 35 cases maltreatment as described above was alleged to have occurred during interrogation with at least 2 and in some cases as many as 6 police officers at a time being involved. Usually maltreatment was alleged to have been intermittent—interspersed with interview sessions in which no maltreatment occurred.

In the majority of the cases in this group it was alleged that interrogation took place intermittently throughout the day. In a number of cases the interrogation continued into the night. The length of each interview period varied between one or two hours and sometimes longer.

The total period of maltreatment alleged varied—usually according to the length of detention: in some of the cases examined it was alleged to have occurred intermittently throughout the first three days of detention; most of those

detained for longer than three days under the Prevention of Terrorism Act alleged that maltreatment occurred intermittently for periods of between three and five days.

Many of the individuals interviewed complained of nervousness, sleep disturbances, and difficulty in concentrating following the detention period. One alleged having contemplated suicide and three stated that they had attempted suicide during the detention. Four were transferred to psychiatric hospitals or were put under the care of a psychiatrist following detention. However, medical documentary evidence to this effect was not available to the mission.

It should be emphasized that the allegations made by individuals dealt with in this section were related to the mission delegates without being elicited by leading questions from the delegates. Considering this, the volume and consistency of the allegations adds weight to the general assertion that maltreatment had occurred, and provides a context for the cases with medical evidence which are examined in the following sections of this chapter.

NATURE OF THE MEDICAL EVIDENCE

The mission was able to examine medical reports in the cases of 39 of the 78 persons whose allegations of maltreatment are the subject of this chapter. Nearly all these reports were from the arrested persons' own doctors or from other doctors who examined detained persons at the request of lawyers either during or shortly after detention in police custody. In most of these cases, and in many of the remaining 39 cases, police doctors' reports also exist, but were not available to the mission.

Of the 78 persons whose cases are examined in this report, 37 were known to have received a medical examination by a police doctor on arrival at a detention centre and 29 on release from police custody. Some were also examined by police doctors during their detention. In the majority of the cases where medical evidence was studied by the mission an outside doctor did not examine the arrested person until at least the third day of detention (see Chapter IV on access to detained persons). In a number of cases, however, arrested persons were examined by their own doctors soon after arrest, and at intervals thereafter. In respect of the 39 cases where medical evidence was examined by the mission, the delegates received nearly 50 medical reports from approximately 40 different general practitioners from throughout Northern Ireland and from different sections of the community. The delegates also spoke with 13 doctors who had all examined individuals in police custody.

The doctors' written reports varied considerably in length and in detail. The delegates had in no case reason to disbelieve any of the medical reports presented to them. In many of the cases a police doctor's report was made at the same time as the general practitioner's report, but these were not available to the mission. The delegates believe it would be of great value to have the police doctors' reports, especially those based on examinations made on arrival in detention centres as these could possibly offer an additional check on the validity of the allegations. Police doctors' reports on release or transfer could also be compared with reports of examination on arrival. In cases where detained persons refused a medical examination on arrival in detention the possibility of cross-checking the allegations in this way is eliminated. Police doctors' reports are made available in cases where persons alleging maltreatment are brought to trial, but usually only at a late stage in criminal proceedings; in the majority of cases examined by the mission the complainants were released without charge.

A group of police doctors expressed their willingness in principle to make their reports available to the mission but needed the permission of the Northern Ireland Police Authority to do so.

The mission's request to the Northern Ireland Police Authority for access to police doctors' reports was not granted on the grounds that:

a. It would involve discussion of individual cases with the authorities, contrary to the terms set down by the authorities for their discussions with the AI delegation.

b. It would violate the sub-judice role in cases where trials are pending.

In this report the word "symptom" is used to describe physical and/or mental "after-effects" claimed by complainants. Objective findings as recorded by doctors after examination of the complainants are referred to as "signs." A glossary of medical terms is added to the report.

26 Cases on which Medical Evidence was available to the Mission but who were not interviewed by the Mission.

26 persons in this group were males, 23 were arrested and allegedly subjected to maltreatment in 1977, one in 1975 and two in 1974. In some cases no information about the age of the individuals was available to the mission but where this information was known the subjects' ages varied from 17 to 32 years, averaging about 23 years. The persons concerned came from different parts of Northern Ireland, both rural and urban. In 24 cases maltreatment was alleged to have been inflicted by plainclothes RUC personnel and in two cases by plainclothes RUC personnel together with army personnel.

Maltreatment was most frequently alleged to have taken place in Castlereagh Police Holding Centre (17 cases), but the following other locations were also mentioned: Strand Road RUC Station, Londonderry (1). Omagh RUC Station (2), Cookstown RUC Station (1), Newry RUC Station (2), Bessbrook RUC Station (1), Forkhill Military Barracks (1) and Newcastle RUC Station (1).

Ten of the 26 persons were known to have been medically examined by a police doctor, 6 on arrival at Castlereagh and 4 on arrival at other detention centres. One refused a medical examination, one was not offered an examination and two were not examined for reasons unknown. In 11 cases the mission does not know if the person was medically examined on arrival.

18 of the 26 persons were medically examined by an outside doctor during their detention in police custody. In the remaining 8 cases examination by an outside doctor took place only after their release from police custody; in four of these cases the examination took place shortly after their transfer from police custody to Crumlin Road jail.

As a police doctor is always present when a person has a medical examination in police custody a police doctor's report must exist for each of the 18 cases who had a medical examination during detention. In 15 of these cases specific reference to the existence of such reports was made.

Maltreatment most frequently alleged was beating (22 of the 26 cases). Other common allegations were hair-pulling (14 of the 26 cases), direct trauma to the head (12), physically exhausting procedures (13), beating on the stomach (10), and choking (8). Less frequent allegations included physical violence to the genitals (5) and degrading, humiliating and mentally exhausting procedures (4). There were isolated allegations of other types of maltreatment.

In 14 of the cases examined the alleged victims of maltreatment claimed specific physical and/or mental symptoms. In 12 cases there was no information about symptoms. In the other 14 cases in this group pains were the most frequent symptoms (9), followed by exhaustion (3), nausea (3), and headache (3). Twelve persons complained of mental symptoms, most frequently anxiety (6), sleep disturbances (4), and nervousness. Three persons said they were fearful of future maltreatment.

From the medical reports available, there were signs in all cases except one. The most frequent physical signs were bruises, which were found in 17 of the 26 cases; then abrasions (8), tenderness of joints and muscles (7) and swelling of soft joints and tenderness of palpation of abdomen (4). Four persons had a certain traumatic perforation of the eardrum and three of the cases had bone fracture. The signs of mental disturbances were most frequently anxiety (17) and states of nervous agitation (5). In two cases there were signs of severe depression. In a number of cases there was no information regarding the mental state of the patient in the medical report. In one case there were no signs at all, although the person in question alleged he had been maltreated by beating for 1½ hours. In the opinion of the mission it is most unlikely that the maltreatment alleged in this latter case would have left no signs at the time of the medical examination, which took place during this person's detention and after the alleged maltreatment.

In 23 of the 26 cases the mission found general consistency between the alleged maltreatment and signs. The mission could make no assessment of consistency in one case where the arrested person himself made no allegations although medical evidence was available. In two cases there was no consistency between alleged maltreatment and signs.

The eleven cases in Annex 1 to this chapter are representative of this group of 26. These cases have been selected not on the basis of the severity of the allegations, but rather as being representative of the entire sample of 26.

Nine Persons alleging Maltreatment who were interviewed by the Delegates and on whom Medical Evidence was available to the Mission.

One or more of the delegates took part in each of these interviews.

This group consists of 9 males, all of whom were arrested in 1977. Their ages vary from 19 to 32 years, the average being about 26. In three cases there was no information about the age. Four of the persons were interviewed in Belfast, three in Dungannon and two in Londonderry. In eight of the cases it was alleged that maltreatment had been carried out by plain-clothes members of the RUC, and, in one case, by both military personnel and plain-clothes members of the RUC. Maltreatment was alleged most frequently to have taken place in Castlereagh (8 cases), in one case in Omagh RUC Station, and in one case in Fort Monagh Army Barracks, Belfast.

Six of the nine had a medical examination on arrival at the detention centre. Two out of nine had refused the offer of medical examination and in one case, there is no information on this point. All nine persons were medically examined by a general practitioner and in some cases also by a police doctor during their stay in the detention center. Six of the nine had a medical examination when they left the detention center. One of the nine was not offered a medical examination, and in two cases there is no information on this point.

The most frequent allegations of maltreatment concerned methods producing trauma to the head (beating, wall-banging, etc.), which were alleged in all 9 cases. Then followed general beating (8 cases), hairpulling (8 cases), threats (6 cases), physically exhausting procedures (5 cases), physical violence to the genitals (4 cases) and choking (3 cases).

The symptoms described after the alleged maltreatment were both mental and physical. Both immediate symptoms and those emerging later are included in the following description of individual cases. In one case, there was no information regarding symptoms. Of the 8 cases where symptoms are recorded, seven had mental symptoms, most frequently sleep disturbances and anxiety. Pains were the most common of the physical symptoms, which also included headaches, loss of consciousness (immediate) and impaired hearing.

In all nine cases there were signs. The most frequent physical sign was bruises, found on eight of the nine persons. This was followed in frequency by tenderness of joints and muscles (4 cases), and abrasions (4 cases). Two of the nine persons had a traumatic perforation of the eardrum. The most common mental signs were nervousness and anxiety. Only in three cases was there a description of the mental state in the medical report.

In all nine cases, there was general consistency between the alleged maltreatment and the signs described in the medical reports.

A summary description of each of the nine cases is given in Annex II to this chapter.

FIVE DETAILED EXAMINATIONS

The medical delegates on the mission carried out detailed examination of five persons alleging maltreatment. In four of these cases medical reports by doctors who examined the persons concerned during their detention in police custody or shortly after their release were also available to the mission.

METHOD OF EXAMINATION

Each examination was carried out by the two medical delegates. The methods used have been developed on the basis of experience in examination of alleged torture victims from various countries. Each examination took three to five hours and consisted of an interview section with:

- (a) Establishment of a detailed personal history.
- (b) Physical examination, including neurological examination
- (c) Psychiatric assessment
- (d) Test for cerebral asthenopia. This test can be used in the diagnosis of organic cerebral damage or disease. This was used on only two of the five individuals.

The medical delegates had no "control group" in these examinations as they did not examine any person from Northern Ireland who had not alleged maltreatment and did not examine any person who had not been arrested. To a certain degree, however, the individuals examined acted as their own "control" in that they did not know in advance the types of questions that were to be asked or the

significance of other tests made during the examination; nor did they know the significance of symptoms they described as having occurred after their alleged maltreatment, and their accounts of their earlier personal history. (However, in order for the detailed examinations to be placed in the context of a "control group", individuals who had been interviewed by the RUC but who had not alleged maltreatment should also be examined using this detailed method.)

The cases were not selected on the basis of the severity of the maltreatment alleged, but on the basis of sex, geography and section of the community, as being representative of the total sample of cases examined by the mission.

In three of the five cases considered, the medical delegates found that there was consistency between some or all of the allegations of maltreatment, and the signs and symptoms described in reports of medical examinations. In two of the cases the medical delegates found consistency between the maltreatment alleged and signs and symptoms present at the time of their detailed examination of the complainants. In one case, the medical delegates felt that the consistency between the signs and symptoms present at the time of the detailed examination and the maltreatment alleged, while not in itself conclusive, still strongly corroborated the case that maltreatment had taken place, when viewed in connection with the other medical evidence available. In one case, where the patient had developed a psychosis, the medical delegates found that it was unlikely that this psychological state could have developed had the maltreatment alleged not taken place. In one case, the detailed examination was inconclusive. In all, the medical delegates were able to conclude in three of the five cases that all the available evidence, including the results of the detailed examinations, strongly corroborated the case that maltreatment had taken place.

SUMMARY OF FINDINGS

(1) There is a high degree of consistency among testimonial from numerous individuals belonging to different sections of the community as to methods used in alleged maltreatment.

(2) In the majority of cases, in which medical evidence was available to the mission, there was consistency between the signs and symptoms noted in that evidence, and the allegations of maltreatment which were either mentioned in the medical evidence, or reported to the mission delegates during interview, or both.

(3) In a few cases evidence of self-inflicted injuries was found. In most of such cases interviewed by the mission the person in question volunteered the information that they had inflicted such injuries on themselves as a means of terminating their interrogation—e.g. by being taken to hospital. Doctors to whom the medical delegates spoke confirmed that in their experience the simulation of injuries for the purpose of defaming the police was very rare.

(4) In the detailed interviews the medical delegates asked a number of non-leading questions concerning symptoms. Descriptions by persons interviewed by the mission of their reactions immediately following maltreatment were similar in a large number of cases. Answers were in some cases analagous to accounts given by alleged torture victims to previous AI investigations using the same detailed method, carried out in other countries.

APPENDIX C

"THE BENNETT REPORT," MARCH 1979, [REPORT OF THE COMMITTEE OF INQUIRY INTO POLICE INTERROGATION PROCEDURES IN NORTHERN IRELAND].



Report of
The Committee of Inquiry
into
Police Interrogation Procedures
In Northern Ireland

*Presented to Parliament by the Secretary of State for Northern Ireland
by Command of Her Majesty
March 1979*

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COMMITTEE OF INQUIRY
INTO
POLICE INTERROGATION PROCEDURES IN
NORTHERN IRELAND

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Secretary:

N. R. VARNEY, ESQ.

COMMITTEE OF INQUIRY INTO POLICE INTERROGATION
PROCEDURES IN NORTHERN IRELAND

Government Buildings
Great George Street
London SW1P 3AJ

Parliament Buildings
Belfast BT4 3SY

16 February 1979

To the Right Honourable Roy Mason, M.P., Her Majesty's Principal Secretary of State for Northern Ireland

DEAR SECRETARY OF STATE

We were appointed by you in June 1978 to examine police procedures and practice in Northern Ireland relating to the interrogation of persons suspected of scheduled offences; to examine the operation of the present procedures for dealing with complaints relating to the conduct of police in the course of the process of interrogation; and to report and make recommendations.

We now submit our report, in which we are unanimous.

We alone are responsible for the contents of this report, but we must record our gratitude to all those who provided us with the material which formed the basis of our work, and our appreciation of their readiness to give us their time and attention, and the benefit of their knowledge and experience. Our thanks are owed especially to our secretary, Nigel Varney, and his assistant, Noel Cornick, for their very efficient administration of the Committee's work, and, to the former in particular, for his outstanding assistance to the Committee in the preparation and drafting of this report.

Yours sincerely

H. G. BENNETT

JAMES HAUGHTON

JOHN MARSHALL

N. R. VARNEY
(Secretary)

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PART I

INTRODUCTION

CHAPTER 1

BACKGROUND AND SCOPE OF THE INQUIRY

Appointment of the Committee

1. On 8 June 1978 the Secretary of State for Northern Ireland, the Right Honourable Roy Mason, M.P., in the course of a Parliamentary statement on behalf of Her Majesty's Government on the Amnesty International report of its mission to Northern Ireland, announced that a Committee of Inquiry would be appointed. On 16 June 1978 the Secretary of State named the members of this Committee of Inquiry and set out its terms of reference, viz:

"To examine police procedures and practice in Northern Ireland relating to the interrogation of persons suspected of scheduled offences; to examine the operation of the present procedures for dealing with complaints relating to the conduct of police in the course of the process of interrogation; and to report and make recommendations."

Scope of the Inquiry

2. The immediate occasion for the appointment of this Committee was the publication of the report of an Amnesty International mission which visited Northern Ireland between 28 November and 6 December 1977. Their report was sent to Her Majesty's Government on 2 May 1978 and was published generally on 13 June 1978. That report recommended, amongst other things, the establishment of a public inquiry which would investigate the allegations made to the mission of maltreatment of persons undergoing interrogation. H.M. Government, for reasons which were given in the Parliamentary statement to which we have already referred, did not accept that recommendation. Instead, H.M. Government invited Amnesty International to submit to the Director of Public Prosecutions in Northern Ireland the allegations of criminal conduct which they wished to make and their evidence, so that he might investigate those allegations and in due course make a report on his general findings and conclusions. At the same time, however, this Committee was appointed to investigate, in private, police practices relating to interrogation and the procedures for dealing with complaints. It was made clear that it was no part of this Committee's duty to inquire into individual allegations of maltreatment, either those which had been made anonymously and in confidence to the Amnesty International mission or others. It was stated that, if Amnesty International were to make available to the Director of Public Prosecutions the material necessary for him to investigate the allegations in the Amnesty International report, his general conclusions would be furnished not only to the Government but also to this Committee of Inquiry. In the event, the information has not been given to the Director and no such report from him has therefore come into the hands of this Committee.

3. It is to be noted that on the question of the admissibility in evidence of statements by prisoners, which was one of the major issues raised in the Amnesty International report, and in particular the operation of section 6 of the Northern Ireland (Emergency Provisions) Act 1973¹, the terms of the announcement of the appointment of this Committee specifically excluded from the scope of its inquiry another examination of section 6, or of the emergency legislation generally. At the time of our appointment Lord Shackleton was, at the invitation of H.M. Government, then engaged in a general review of the Prevention of Terrorism (Temporary Provisions) Acts 1974 and 1976. His report², to which we refer later, was published on 24 August 1978. Furthermore, this Committee was not required to investigate the exercise of the powers and discretions of the Director of Public Prosecutions for Northern Ireland in relation to criminal proceedings, or the fairness or efficacy of criminal proceedings generally. We are aware that the Royal Commission on Criminal Procedure is currently reviewing the whole criminal process from arrest to trial in England and Wales. It may be that any major changes recommended by the Royal Commission, if adopted in England and Wales, will also be adopted in Northern Ireland, but we have proceeded to our conclusions and recommendations on the basis that the essential features of the existing system of criminal investigation and trial will continue for the immediate future.

Procedure

4. We were not empowered to take evidence on oath, or to enforce the attendance of witnesses or the production of documents. In gathering evidence, therefore, the Committee proceeded by way of invitation. Our first step was to request written material from official sources to enable us to acquire the necessary background information. These sources were the Chief Constable of the Royal Ulster Constabulary, the Police Authority for Northern Ireland, the Police Complaints Board for Northern Ireland and the Director of Public Prosecutions for Northern Ireland. In this way we were able to familiarise ourselves with the broad outline of the existing practices and procedures under review.

5. We then issued further and wider invitations to give evidence with a view to assessing the operation of the current procedures. At this stage we felt it necessary as a practical matter to distinguish between those who in our view would be most likely to have relevant matters to place before the Committee and others whose contribution we were not then in a position to judge. To the former we addressed specific invitations to give written evidence. Invitations of this sort were issued to the following:

- The Superintendents Association for Northern Ireland
- The Police Federation for Northern Ireland
- The Incorporated Law Society of Northern Ireland
- The General Council of the Bar for Northern Ireland
- Amnesty International.

We received a useful letter from the Superintendents Association setting out their views in broad terms. The Police Federation for Northern Ireland

¹ Now replaced by section 8 of the Northern Ireland (Emergency Provisions) Act 1978.

² Cmnd. 7324.

informed us that they had nothing useful to add to the material already made available to us by the Chief Constable. As a result of our invitation to the Incorporated Law Society, letters were received from a number of solicitors in Northern Ireland. We received no information from the General Council of the Bar or from individual barristers acting in that capacity. Amnesty International sent us two letters in which they declined to discuss individual cases with us, but expanded usefully on the general points and recommendations in the report of their mission to Northern Ireland. We also arranged to receive written information from the Senior Medical Officers at the police offices at Castlereagh, Belfast and Gough Barracks, Armagh; and we received a useful memorandum from the Association of Forensic Medical Officers of Northern Ireland.

6. In addition to the specific requests for information addressed to the persons and organisations referred to above, we issued general invitations to the public to make representations to the Committee. This was done by means of advertisements which appeared widely in Northern Ireland newspapers and journals on or around 11 July and 23 August 1978. In issuing these advertisements, we felt it right to explain that we would not be in a position to adjudicate on allegations against the police or to offer special redress to complainants.

7. We finally received material from the following, in addition to the persons and organisations referred to above:

Northern Ireland Office
The Alliance Party of Northern Ireland
Professor Kevin Boyle
Councillor J. Hassard, J.P.
Mr. D. Murphy

and we received useful information from a number of members of the public, including some who had been held in police custody, whom we do not think it is necessary or desirable to name. The National Council for Civil Liberties, who had earlier indicated a desire to give written and oral evidence, subsequently wrote to us saying that they did not intend to do so but also making certain general points.

8. Some of those who wrote to us expressed a desire to give oral evidence; some we ourselves wished to hear from; and in other cases, we invited people to appear before us who had not given written evidence. Our hearings occupied fourteen days in Parliament Buildings, Stormont, and three of our meetings in London, and we heard a total of 58 witnesses. Of these, 19 were members of the Royal Ulster Constabulary, ranging in rank from chief constable to detective constable; 10 were medical practitioners employed or retained by the Police Authority for Northern Ireland, including the Senior Medical Officers at Castlereagh and Gough, a number of the doctors who deputise for them, and representatives of the Association of Forensic Medical Officers; and 11 were members or officers of the Police Authority and Police Complaints Board. Our official witnesses also included the Director of Public Prosecutions for Northern Ireland, the Chief Medical Officer at the Department of Health and Social Services (Northern Ireland), the Senior Medical Officer at H.M.

Prison, Belfast, and a representative of the Director of Public Prosecutions for England and Wales. In addition we received representatives of the Alliance Party, of the Community of the Peace People and of the Belfast Community Law Centre, two members of Boards of Visitors of H.M. Prisons, two solicitors and a doctor in general practice, and a number of other members of the public.

9. In addition to receiving evidence from police officers during our sessions at Stormont, we were also able to hold very useful informal discussions with a large number of other police officers, in both the uniformed and C.I.D. branches of the force, ranging in rank from assistant chief constable to constable, during our visits to police offices, police stations and other police establishments. On our first visit to Northern Ireland we visited the police offices at Castlereagh and Gough. At each we spent half a day examining the premises and discussing their administration and operation. Subsequently we also visited police stations at Springfield Road, Tennent Street and North Queen Street (all in Belfast), Strand Road (Londonderry) and Portadown, Dungannon, Omagh and Cookstown. On these visits we were particularly concerned to see the cells, interview rooms and medical examination rooms and other facilities, as well as to discuss the facilities and procedures with the staff there. We also visited several specialist police establishments in Belfast.

10. Some of those who gave oral evidence to us, and some of the police officers to whom we spoke on our visits, furnished us with additional material in writing in illustration of points made orally. We also requested additional information ourselves, in particular from the Police Authority and the police, who met our requests in full. As will appear later in this report, among the papers examined by the Committee were reports by medical officers in cases in which complaints had been made against the police, and police files concerning the investigation of complaints. The latter did not, however, include files which were currently before the Director of Public Prosecutions for consideration.

11. We are grateful to all those who gave information and opinions to us. All such information and opinions, without exception, have been helpful in the inquiry, and a large number of our witnesses evidently went to considerable trouble to prepare their evidence. It was brought to our notice that other persons and organisations who might have had relevant information had refrained from putting it forward because of the private character of this inquiry and, as they saw it, its likely outcome. This was, for us, a matter of regret.

Scheme of the report

12. The scheme of this report is as follows. After this introduction, in the remainder of Part I, we set out some of the background against which the police in Northern Ireland have to work and the essential features of police interrogation. In Part II, we outline the current procedures and practice in Northern Ireland with regard to interrogation. In Part III, we set out our assessment and recommendations with regard to interrogation. In Part IV, we outline the way in which complaints are dealt with. In Part V, we set

out our assessment and recommendations with regard to the handling of complaints. In Part VI, we summarise our principal conclusions and recommendations.

Timing

13. The report of the Amnesty International mission was largely concerned with allegations of maltreatment alleged to have taken place in the years 1975 to 1977. We have confined our own enquiries very largely to the years 1977 and 1978, having noted the many changes which have been made in police practices and procedures and in particular in police orders, rules and regulations in these years. We have attempted in the body of our report to record the most important of these changes so that the position may be made clear.

Terminology

14. We have chosen to use the word "prisoner" to describe a person kept in police custody who has either been arrested by a police officer or who has been delivered into police custody after arrest by some other authorised person. Our use of the term does not include persons serving a sentence of imprisonment in prison or persons who have been remanded in custody by a court. We have used the words "interrogation" and "interview" more or less interchangeably to describe the process of questioning of all prisoners. In making general use of the word "interrogation" we have had regard to the terms of reference given to this Committee, although we are aware that the word "interview" is commonly used to describe the questioning of a prisoner in relation to a specific offence which he is suspected of having committed, and the word "interrogation" is commonly confined to questioning for the purpose of obtaining general information and intelligence. We have used the words "witnesses" and "evidence" to describe those who came to talk to us and what they said, although our hearings were in private, we were not empowered to take evidence on oath and those who came to see us were not accompanied by legal representatives. We have described the two community groups in Northern Ireland as "Republican" and "Loyalist" for convenience and conciseness, although we are aware that neither term is necessarily exact, and that each group contains within itself considerable differences of opinion and action. We prefer the word "ill-treatment" to "maltreatment". In all other instances where a word is defined in the legislation with which we have been concerned, we have adopted that definition. We have abbreviated "Royal Ulster Constabulary" to "R.U.C." and "Criminal Investigation Department" to "C.I.D.".

15. Our terms of reference concern "persons suspected of scheduled offences". In paragraph 67 below, we explain what scheduled offences are and how they came to be so described. Broadly speaking, the scheduled offences are those which are most commonly committed by terrorists, and it is on the treatment of persons suspected of being terrorists that attention has largely focussed; the Amnesty International report, for example, appears to be concerned exclusively with the treatment of suspected terrorists. But most of the scheduled offences were known to the law before the current campaign of terrorism arose, and are committed not only by terrorists but also (although to a much smaller degree in Northern Ireland) by persons

who are not terrorists and have nothing to do with terrorism. Our terms of reference require us to consider the treatment of such persons as well as of terrorist suspects. The general approach that we have adopted, and the general conclusion that we have reached, is that our analysis and recommendations should apply to all persons dealt with by the police as being suspected of scheduled offences, whether regarded as terrorist suspects or not. A further point to be noted here about our terms of reference is that the emergency legislation in Northern Ireland allows persons to be arrested and questioned on the basis that they are suspected of being terrorists, even though they may not be suspected of having committed a specific scheduled offence. Strictly construed, our terms of reference might seem to exclude such persons, but our approach has been to include them along with persons suspected of scheduled offences.

Background

16. Our duty of considering police practices and procedures in the interrogation of prisoners suspected of scheduled offences cannot be considered in isolation from the situation in which the police must carry out their task. It is just ten years since the present wave of terrorist activity began in Northern Ireland. The express purpose of the paramilitary organisations on the Republican side is to destroy the existing constitution and order of society by violent means. For their part, the paramilitary organisations on the Loyalist side have used violence to destroy or intimidate their opponents. In the result over 1,800 people have been killed and over 21,000 wounded. Many of these were innocent victims killed or wounded as they were going about their daily occupations, in one of more than 6,000 bombings. The physical damage to property is obvious on every side. The whole community has suffered from ruined lives, wrecked homes, lost jobs, and loss of peace and security at the hands of these enemies of their society.

17. These crimes are unlike ordinary crimes, in which the police are called on to deal with violence and injury inflicted by one citizen on another for personal reasons or motives. The paramilitary organisations have, of course, overtly political purposes; and the Army, the police and prison officers, as the guardians and defenders of society, have been primary targets for terrorists. More than 370 soldiers have been killed and more than 3,000 wounded. Up to 31 December 1978, 117 members of the R.U.C. (including the Reserve) had been killed and 3,251 injured. Even these statistics do not fully convey the personal tragedies inflicted on the R.U.C. The extent of their sacrifice is brought home to the visitor by the memorial tablets at police stations, and by accounts of such family tragedies as of father and daughter, both police officers, killed in separate incidents and of officers shot down in a most cowardly way in performing such routine work for the community as shepherding children across the street outside their school.

18. During the earlier years of the decade, prime responsibility for security fell upon the Army. Since January 1977, the police have undertaken first responsibility for security, with the Army in support. This policy has been steadily successful, as is evidenced by the large numbers of crimes detected, the large number of criminals brought to trial and convicted, and the decline

in the numbers of serious crimes committed. The R.U.C. has been able to expand the area and intensity of its operations, but still requires the support of the Army in some areas and in some of its activities.

19. Effective policing of a community can only be achieved with the consent and support of the overwhelming majority of that community. This consent is normally forthcoming because the majority see the police as representing and safeguarding the peace and order they wish to see prevail in society. But it may be lost if the police themselves fail to measure up to the standards expected of them either in observance of the law or in the successful pursuit of their many tasks, and particularly in the prevention and detection of crime. Consent may also be lost as a result of the efforts of those who do not wish peace and order restored, but who wish to discredit the police and so deprive them of public support. We have, in the course of our inquiry, seen abundant evidence of a co-ordinated and extensive campaign to discredit the police. We have been shown literature in which the intemperate nature of the language and the character of the illustrations leaves no doubt that it was designed to destroy the reputation of the police at home and abroad. This propaganda is principally concerned with allegations of ill-treatment of prisoners in the course of their interrogation by the police.

20. It is apparent that any misconduct by an individual member of the force concerned with the interrogation of prisoners affects the reputation of the force as a whole in the community, makes more difficult and dangerous the work of his comrades on the streets, and so defers the day of the return of peace in the community. It strengthens the propaganda campaign and provides ammunition for the enemies of society who are adept and experienced in inventing allegations against the police, even without any justification. We have seen evidence which establishes that this is their declared purpose. One of the purposes of this inquiry is to review police practices and procedures in the interrogation of prisoners so as to ensure so far as possible that ill-treatment of prisoners cannot take place. If this purpose can be achieved, and can be shown to have been achieved, it will make difficult, if not impossible, the task of those who seek to discredit the police by inventing false allegations of ill-treatment.

CHAPTER 2

INTERROGATION PROCEDURES: BACKGROUND AND BASIC DIFFICULTIES

21. We have mentioned in the last section of the previous chapter some of the circumstances which make the work of the police in Northern Ireland more arduous and dangerous than anywhere else in the United Kingdom, or indeed in Western Europe. Our purpose in this chapter is to deal more specifically with some of the difficulties facing the police and with how those difficulties affect their work in the investigation of crime. No useful purpose would be served by an attempt on our part to analyse the present situation in Northern Ireland in terms of history, sociology, religion or politics in order to discover the causes of those difficulties.

Background difficulties

22. The basic fact is that the R.U.C. have to operate within a deeply divided community. The numbers of persons actively engaged in violent crime are very small, but they are able to call on supporters (willing or unwilling) for shelter, transport and so on. Rather more support has in the past been available for marches and demonstrations. The overwhelming majority of the population plays no part in these activities, and indeed hates and fears the methods used by the activists, with good reason. The effects of violence on the daily life of the community are such as to build up a tremendous pressure on the police to get results by bringing those responsible to book. Yet the efforts of the police to do so are hampered by active and passive resistance. There are those in the Republican minority who see the police as part of the apparatus for maintaining Loyalist supremacy, and will give no assistance. Those who might be willing to assist are often too frightened to do so by the ruthless revenge exacted upon those believed to be police informers. Failure, or apparent failure, on the part of the police to prevent violent crime or to bring the criminals to justice brings about reaction in the form of sectarian murders or mass demonstrations, with which again the police have to deal. The police therefore find themselves accused of being in one camp, and in fact are the target of both sides. The extremists on each side take the law into their own hands. Each side calls for more effective action against the men of violence on the other side. This constant pressure on the police to get results is accompanied by a constant stream of criticism of their methods of doing so, designed in many instances deliberately to obstruct their efforts, for political reasons.

23. These violent crimes are not committed by individuals or small groups acting for their own advantage, without much in the way of planning, preparation or organisation. They are planned, prepared and organised over the long term. Financial support is obtained by one means or another. Arms and explosives are bought or stolen. The criminals may quickly find a safe refuge with sympathisers within their own community or over the Border. It is known that those engaged in these activities are taught that, if caught, they must keep silent and must never give away their associates or the secrets of their organisation, on pain of death.

24. The polarisation of political opinion is mirrored by a sharp physical separation of the two parts of the community, particularly in Belfast and Londonderry. There are thickly-populated areas there where the police face active hostility from a close-knit community, who know each other well, quickly recognise strangers or visitors from the other camp, and soon know all that is going on in their area. The same circumstances are found in some of the smaller towns and in some rural areas. The police often face a conspiracy of silence reinforced by the tyranny of fear. No other police force in the United Kingdom is called on to deal with so much violent crime in such unpromising circumstances.

Methods of detection of crime

25. The normal methods of detection of crimes of violence involve four aspects:

- (1) meticulous and expert examination of the scene of the crime;
- (2) the collection of evidence from witnesses, including that of the victim, if alive;
- (3) the obtaining of information from informers; and
- (4) the questioning of suspects.

26. In Northern Ireland the examination of the scene of the crime is often hampered by difficulties unknown elsewhere. It may be in a hostile area where prolonged, careful and detailed examination of the scene by police, forensic scientists and pathologists is impossible. Care may have been taken to destroy the evidence at the scene, or the premises or vehicle used may be booby-trapped, which may in turn result in the destruction of the evidence or long delay before an examination can be carried out. The very number of incidents occurring on any one day in the periods of the greatest criminal activity may make it impossible for full coverage to be given by the available experts of the kind they would wish to give.

27. The collection of evidence from witnesses also presents special difficulties. Routine methodical enquiries in the neighbourhood of the crime at houses, factories, pubs and clubs are sometimes impossible and, where possible, often unfruitful. The collection of evidence is hampered by the traditional reluctance to help the authorities, strengthened by the fear of the consequences of doing so. Even where there are witnesses who should be able to give useful information, fear of reprisals may stop their mouths. The murder of a witness before trial has occurred. The position of the informer is equally perilous. The police do in fact receive a considerable amount of information from a specially instituted scheme by telephone, but the reliability of this information cannot easily be checked. In the case of known informers, special care has to be taken to shield and protect them against discovery, whether in the field, in the interview room or in court.

28. With regard to the questioning of suspects, in Great Britain a suspect may be seen at his home, or in the street or at his place of employment and initially questioned either there or in a waiting police car. He may be willing to go to a police station "to assist the police with their enquiries"

Not so in some districts in Northern Ireland, where an arrest may be the only means of making or maintaining contact with a suspect. In hostile areas, arrests may have to be made at a time of day or night when the street will not be roused. The police may need Army support, and the suspect may need to be removed from his neighbourhood speedily for the safety of the officers to a place of security from which he cannot escape or be rescued.

29. A recital of these difficulties hampering the normal methods of investigation of crime emphasises the fact that reliance has to be placed on interrogation leading to admissions in many cases. Interrogation cannot, however, take place in a vacuum. The interrogator has to have something to ask about, or some allegations to put to the suspect. The interrogator is very dependent on the quantity and quality of the information available to him as the material on which his questions are based. An intelligent suspect may soon discover how much or how little is known against him.

Reliance on admissions

30. However good the information, however carefully it has been collected and collated, however well it has been absorbed by the interrogator, and however skilful he may be, if the suspect will not answer questions, there can be no result. This is the basic difficulty: the more steadfast the suspect, and the more experienced and committed, the less likely is he to answer questions or make admissions. The rate of success by the interrogators is in some respects surprisingly high. It is true that the proportion of prisoners charged in relation to the total numbers arrested and questioned is of the order of 1 : 2. Of those charged and brought to trial, the Amnesty International report at page 2 quoted a press report that research had been undertaken in 1977 in the Law Department of the Queen's University, Belfast, and had shown that 94 per cent of the cases brought before the Belfast City Commission over an unidentified period resulted in conviction. Figures supplied to us by the Director of Public Prosecutions for Northern Ireland for the six months from 1 January to 30 June 1978 for scheduled offences were as follows:

Total cases:	568	persons	
Pleas of guilty:	411	„	(i.e. 72 per cent)
Convicted on trial:	121	„	(i.e. 21 per cent)
Acquitted on trial:	36	„	(i.e. 6 per cent)

These figures show a remarkable consistency with the earlier results. We were informed by the Director that in 75–80 per cent of these cases, the prosecution case depended wholly or mainly on the confession of the accused. We understand that the research conducted at Queen's University had not proceeded beyond identifying the proportion of cases in which inculpatory admissions in the form of formal written confession statements had been made. In 1976 it was 65 per cent. That figure did not, however, include cases in which the suspect made only oral admissions in answer to questions. Professor Kevin Boyle told us in his written submission:

“My own impression . . . is that the percentage has been increasing and may well in 1977 have been nearer 75 per cent of cases. However, there is no systematic research evidence to justify the statement that such a

high percentage of cases involved reliance on statement evidence and more particularly, research which quantifies the proportion of cases relying exclusively or mainly on such evidence as the prosecution case."

So far as experience in England goes, such figures as are available seem to show that the proportion of convictions is somewhat lower, but we have not seen any figures identifying the proportion of cases in which the prosecution case against the accused consisted wholly or mainly of his confession. There is no doubt, however, that in a very high proportion of cases in England the case against the accused includes an admission or confession by him.

31. We have sought to set out here the main difficulties faced by the police in Northern Ireland in conducting their investigations into crime, which have resulted in the police having to rely to a large extent in many cases on oral admissions and written confessions obtained in the course of interrogations of prisoners as evidence against them. We deal elsewhere, in Chapter 9 of this report, with the criticism that the police place overmuch reliance on interrogation and its results, and that having obtained conditions favourable to the conduct of interrogations, they may tend to neglect other methods of gathering evidence. We turn now to deal with methods of interrogation.

CHAPTER 3

METHODS OF INTERROGATION

32. The questioning of suspects in relation to a crime which is known or suspected to have been committed is, as we have indicated in the previous chapter, a normal part of police procedure in the investigation of crime in England and Wales, as in Northern Ireland. This is worth stressing because some of the publications that we have seen paint a picture which exaggerates the part played by questioning in Northern Ireland in contrast with the part played by it in England and Wales or elsewhere. It is also to be stressed that admissions and confessions by the prisoner constitute a significant element in the evidence against him in a high proportion of cases in England and Wales. What is particularly to be noted is that under the legislation which we deal with in Chapter 5 below a suspect can be detained against his will for questioning for a period of up to seven days, and that his arrest and questioning need not be linked to an enquiry into a specific offence or offences. Furthermore, the difficulty which the police have in the conditions in Northern Ireland in securing evidence of other kinds concentrates attention on the process of interrogation; but there is no reason to think, and no evidence to show, that there is anything unique in the nature of the procedures carried out in Northern Ireland.

The interrogation process

33. The essential feature of interrogation procedure is that questioning of the suspect by police officers takes place in private, the officers and the suspect being alone together. This was expressed by the Supreme Court of the United States in the *Miranda* judgment³ in the following terms:

"The principal psychological factor contributing to a successful interrogation is privacy, being alone with the person under interrogation."

Only in these conditions and sometimes only after a considerable time is a personal relationship achieved in which a suspect may decide to reveal and discuss his activities. As expressed in paragraph 84 of the Diplock Report⁴,

"Only the innocent will wish to speak at the start. The whole technique of skilled interrogation is to build up an atmosphere in which the initial desire to remain silent is replaced by an urge to confide in the questioner. This does not involve cruel or degrading treatment. Such treatment is regarded by those responsible for gathering intelligence as counter-productive at any rate in Northern Ireland, in that it hinders the creation of the rapport between the person questioned and his questioner which makes him feel the need to unburden himself."

Reasons for confessions

34. It may be wondered why a suspect should ever confess to a crime, possibly carrying heavy penalties, during interrogation, particularly if the police are unable to confront him with incontrovertible evidence from the

³ *Miranda v. Arizona* 384 U.S. 436 (1966).

⁴ *Report of the Commission to consider legal procedures to deal with terrorist activities in Northern Ireland*, Cmnd. 5185, December 1972.

scene of the crime or from witnesses. There is a number of reasons which may lead a person to make a voluntary confession. The mere fact of arrest and detention may lead many people to talk. The shock of sudden arrest, the removal from home and family to a forbidding place of detention and interrogation in private create a state of mind in the suspect which leads him to talk. Alternatively, he may talk because he hopes thereby to gain some advantage. He may feel that if he co-operates with the police this may well count in his favour in a subsequent trial.

35. Another cause for confession may be that the crime may weigh heavily on the conscience of the suspect who, given the opportunity, is anxious to unburden himself. This may happen with non-terrorist crime as when a person discovered in the act of burglary injures or kills someone contrary to his original intention. So with terrorist crime, when a member of a terrorist organisation is blackmailed into carrying out crime he had not contemplated when he joined the organisation, and is fearful of the consequences of refusing to carry out the order. Arrest and detention may come as a great relief to such a man and so may put him in a mood to confess.

36. A confession may also be forthcoming from a suspect who is at first not inclined to talk but whom decisive, persistent questioning, particularly when the nature of the questions indicates that the police have considerable knowledge of him, his history, his movements, his associates and his criminal activities, may lead to talk. This indicates the importance of the gathering of general intelligence and its collation as the source material for the conduct of interrogation. Another potent factor may be that repeated questioning about the same events may lead the prisoner to give differing accounts of them. A forceful pointing out of the inconsistencies in his accounts may weaken his resolve to maintain a false story.

37. There are therefore many reasons why suspects make confessions which are "voluntary". They will, however, only be made in an interrogation procedure with the right atmosphere. They will not be made in the atmosphere of a casual conversation or cosy fire-side chat. Persistent, forceful questioning may be needed. A variety of synonyms is to be found in the literature describing such methods and attitudes, which do not imply the use of unlawful means.

38. There are of course other ways in which a confession may be obtained. The phrase "torture or cruel, inhuman or degrading treatment or punishment" (taken originally from Article 5 of the Universal Declaration of Human Rights) sufficiently describes them, by which agony of body or mind, or the hope of its cessation, may compel a confession. Such agony of body will usually be caused by acts of physical ill-treatment which can be observed or their results seen in the form of injury. No less compelling, but more difficult to detect, is agony of mind caused by improper psychological pressures such as threats of death or injury to the prisoner, his family or friends, or insults to him, his family, his religion or country, or obscene suggestions and abuse, designed to impress on the prisoner his utter isolation and helplessness and the hopelessness of his future.

39. It would be idle to deny that the facts of arrest, custody and questioning are in themselves forms of psychological pressure. Such matters as the length of the session of interrogation, the numbers of interrogators engaged at any one time or in succession with the same prisoner, and so on, are crucial to the issue of what should be permitted and what should not.

40. One of the real dangers arising from the use of improper methods is that the prisoner, in order to bring the questioning to an end, may be prepared to confess to anything, true or false. It is not unknown in the world at large for false confessions to be made, and they are surely more likely to be made if force or the threat of force and pain are used. It is difficult to see what private or public purpose is served by the exaction of untrue confessions, and it is a danger constantly to be guarded against.

41. The further question then arises, quite apart from the danger of false confessions, how far a liberal and democratic society thinks it right to proceed in its methods of crime detection. The situation in Northern Ireland poses the classic dilemma for such a society in its sharpest form. On the one hand that society is subject to violent attack aimed at its overthrow, and its people are killed, maimed and despoiled; on the other, that society seeks to assure to its people freedom under the law from violence and oppressive conduct. It is with this dilemma in mind, the solution to which can rest only in the hands of the political sovereign, that we have made our assessment and recommendations.

42. That same privacy, an essential pre-requisite in the formation of a relationship between prisoner and interrogator which will lead the prisoner to make a true confession, provides the chance for the over-zealous or unscrupulous interrogator to break the law, and to use unfair and violent means and methods. It also provides opportunities for false allegations to be made later against the interrogator, and so creates the material for the propaganda machines of terrorist organisations determined to destroy public confidence in the legal process. The problem is how to supervise and control interrogations so as to minimise the chances of improper behaviour and the opportunity of making false allegations, without impairing the efficiency of interrogation in obtaining evidence leading to the conviction of criminals, which the public generally want and expect.

PART II

INTERROGATION: CURRENT PROCEDURES AND PRACTICE

CHAPTER 4

POLICE ORGANIZATION FOR INTERROGATION IN NORTHERN IRELAND

Responsibility for interrogation

43. Responsibility for interrogating persons taken into police custody now lies almost exclusively with the Criminal Investigation Department of the R.U.C. Neither the organization of the C.I.D. in Northern Ireland nor the procedure for keeping prisoners in police custody differs in any dramatic way from the corresponding arrangement in England and Wales. The powers of the police to keep people in custody for interrogation are (as we shall see in the next chapter) enhanced in Northern Ireland by the Northern Ireland (Emergency Provisions) Act 1978; and, on the other side of the picture, the R.U.C. regulations (which we outline in some detail in Chapter 6) confer benefits on prisoners which in some respects go beyond those generally available in the United Kingdom. From the organizational point of view, however, the arrangements are broadly similar.

Number of persons arrested and held

44. It may be helpful at this stage to outline the scale on which interrogation takes place. The following table⁵ shows the number of persons arrested by the police and held for questioning, either under section 12 of the Prevention of Terrorism (Temporary Provisions) Act 1976, section 11 of the Northern Ireland (Emergency Provisions) Act 1978 (or the corresponding power in earlier legislation), or for a scheduled offence under section 2 of the Criminal Law Act (Northern Ireland) 1967:

1975	: 2402
1976	: 3576
1977	: 3571
1978	: 3056

Length of time for which suspects are held

45. The most obvious limitation on the length of time for which a person may be held in police custody is the relevant provision of the statute under which he was arrested. The second most obvious factor is the extent and readiness of the co-operation which he offers to his interviewers. Other factors, however, may include the number of other prisoners being held at the same time, and hence the availability of C.I.D. officers to interview them, and the progress made in obtaining other information, either from enquiries outside police stations or from interviews with other prisoners, which may affect the interrogation of the prisoner in question. Because of these uncertainties, prisoners are not told when they are arrested how long they will be held.

⁵ Source: Royal Ulster Constabulary.

Places at which interrogation takes place

46. Prisoners after arrest may be taken for questioning either to the local police station or to another police station where there are facilities for keeping prisoners, or to one of two establishments which exist solely for the purpose of keeping such prisoners and enabling them to be interrogated. These two establishments, which are of a type described in earlier years as "police holding centres", are now officially described by the police as "police offices". (The description "police office" is also used sometimes to describe certain police stations which have better than average conditions for keeping prisoners, and to which an unusually large number of prisoners are therefore taken. For example, it is sometimes applied to the police stations at Strand Road, Londonderry and at Omagh. In this report, however, we use the term only to describe the two establishments mentioned above.) The first of these police offices, in its current form, was built in 1976-77 at Castlereagh in Belfast, and hereafter in this report we describe it as Castlereagh. The second was opened in November 1977 within the area of Gough Barracks in Armagh, and we describe it as Gough.

47. For the period 1 September 1977 to 31 August 1978, the R.U.C. have provided us with detailed figures which show the police stations at which terrorist suspects were held for more than 4 hours. An abstract of these figures is shown in Appendix 1 to this report. It will be seen from Appendix 1 that more of the prisoners with whom we are concerned are currently taken to Castlereagh and Gough than to all the other police stations in Northern Ireland put together (prisoners may be taken to Castlereagh or Gough either directly after their arrest, or after a short period in another police station). Quantitatively, therefore, it is with the procedures and practice at these two establishments that this report is primarily concerned, although these are in most respects the same as for any other police station.

Accommodation

48. Castlereagh has 38 cells and 21 interview rooms. Gough has 24 cells and 9 interview rooms. The cells are each 2½ metres square, and are furnished with a bed and a chair. The cells have no windows but are artificially lit (the light remains on but is dimmed at night). The ventilation and heating are of a satisfactory standard. The interview rooms are very plainly decorated; some have natural light, but some do not. They are each furnished with a desk or table and several plain upright chairs. The doors of both the cells and the interview rooms are now fitted with simple wide-angle viewing lenses of the kind which householders commonly fit to their front doors so as to be able to identify callers before admitting them; these "spyholes" are so arranged as to allow a person outside the room to see in.

49. The physical conditions at Castlereagh and Gough are undoubtedly austere and forbidding by reason of their simplicity and the fact that the establishments are for the most part artificially lit and ventilated. The standard of accommodation is however high, in terms both of convenience and of comfort, by comparison with many other police stations in Northern Ireland (and, for that matter, in Great Britain). The quality of accommodation in other police stations appears to vary widely through the Province. Some have

cells and interview rooms which are acceptable; in others, the cells are dank and the interview rooms are simply makeshift. This is not the fault of the police, whose own living and working conditions in these stations leave a very great deal to be desired. It is, however, a fact to be considered in weighing whether suspects should be held at local police stations or in one of the police offices. Another such fact which in our view needs to be considered is whether the general layout of cells and interview rooms facilitates effective supervision by senior officers.

Criteria used in deciding between police offices and police stations

50. The latest force order issued to C.I.D. officers concerning the choice between sending suspects to a police office or keeping them in a police station, which dates from 1 August 1978 but which we understand largely re-affirms previous practice, directs that all suspected terrorists should be detained at Castlereagh or Gough unless operational needs dictate otherwise. Among the factors to be taken into account are the nature and extent of local enquiries which require to be made, the likely duration of the detention in police custody and the facilities and amenities at the police station. It is also stated, however, that the police stations at Strand Road, Londonderry and at Omagh (where the accommodation, although on a smaller scale, is to a reasonably high standard) are to be fully used.

51. These directions are thus based on the fact that the accommodation at Castlereagh and Gough is superior to that of many police stations. Other factors, however, may also be assumed to influence the decision in favour of one of the police offices. They are, for example, more secure than many police stations. Moreover, it appears to us that the decision is likely to be influenced in many cases by the convenience of the C.I.D. officers who will conduct the questioning, and it is to this that we now turn.

Organization of the Criminal Investigation Department

52. The C.I.D. officers regularly involved in interviewing terrorist suspects fall into two categories. First, there are C.I.D. officers attached in the normal way to a territorial division of the R.U.C. In 11 of the 16 police divisions of Northern Ireland the divisional C.I.D. is headed by a detective chief inspector, in four others by a detective inspector and in the one remaining division by a detective sergeant. Under normal circumstances these officers would be solely responsible for the detection of crime, whether of a terrorist or other nature.

53. Secondly, however, a number of regional crime squads have in recent years been established in Northern Ireland to deal specifically with serious crime, which effectively means terrorist crime. There are now four such squads in the Province: the Headquarters Crime Squad, the Belfast Regional Crime Squad, the Regional Crime Squad (North) and the Regional Crime Squad (South). Each is headed by a detective superintendent who is responsible to the senior detective officer at R.U.C. Headquarters, who is a detective chief superintendent. The divisional C.I.D. officers are directly responsible to their divisional commander (a uniformed chief superintendent), but work in close liaison with the regional crime squad officers.

54. The pattern of use to which the regional crime squads are put is largely similar to that of their counterparts in England except that in Northern Ireland the squads concentrate entirely on terrorist crime and therefore (since the investigation of terrorist crime proceeds more by way of interrogation than in any other way) to a higher degree on interrogation. Of the 464 C.I.D. officers in Northern Ireland regularly engaged in interviewing terrorist suspects, some 89 are members of one or other of the crime squads. The intention overall is not that the crime squads should supplant the divisional C.I.D. in the investigation of terrorist crime, but that they should constitute an extra resource available to the R.U.C. as a whole and not be tied down on exclusively local matters. A degree of specialisation may thus be inferred, but we have been assured that the crime squads keep in close touch with their divisional colleagues, and our informal conversations with groups of C.I.D. officers bear this out.

Interrogation

55. A person detained for questioning may thus be interviewed either by divisional C.I.D. officers from the area where his offences are suspected to have been committed, or by crime squad officers whose concern ranges more widely, or both; he may also be questioned by officers from a neighbouring division, if they suspect that he is responsible for some of "their" crimes, or by Special Branch officers. Each unit of the C.I.D. may provide a number of officers in turn to question a single suspect: if one pair fails to make progress with him, another may be tried. Questioning is usually by two officers at a time but we understand that a request to speak to one alone will normally be acceded to, and occasionally the number appears to rise to more than two. It will thus be seen that the total number of officers engaged in questioning a single suspect may be very considerable, and the organizational arrangements correspondingly difficult to make. We understand that the notes of previous interviews, or their gist, are furnished to each succeeding pair of interviewing officers.

Rank of interviewing officers

56. The entire operational strength of the C.I.D. in Northern Ireland is headed by a detective chief superintendent, who has in support only 6 detective superintendents and 16 detective chief inspectors. This is to be set against the fact that, for example, 6,783 incidents of a terrorist nature are recorded in the Chief Constable's Annual Report for 1977. In that year also, 1,308 persons were charged with terrorist-type offences, and a total of 3,571 persons were detained for questioning. The result is obvious: the questioning of suspects is to a very large extent conducted by detective sergeants and detective constables; and these officers appear often to have a considerable degree of responsibility for the investigation as a whole. They are, of course, subject to the direction and supervision of the senior detective officers, who may themselves interview prisoners, but these officers in turn are likely to be responsible at any one time for a number of prisoners, and have a range of work outside the interview room itself to attend to.

Selection of C.I.D. officers

57. The selection of C.I.D. officers follows the same pattern as in England and Wales. Recruitment is from volunteers only. Uniformed officers who apply to join the C.I.D., usually after a minimum of two years' service, must obtain the recommendation of their Divisional Commander, who will consult his C.I.D. officers. They are then called before a selection board and, if successful, are appointed as aides to C.I.D. They are attached to one of the more senior members of the divisional C.I.D. staff, from whose experience they begin to learn their trade. Their progress is closely monitored, and they are subject to quarterly reports by a senior officer. After 12 months, if he has attained the required standard, an aide would normally return to uniformed duty to await a vacancy for a permanent position in the C.I.D. In the abnormal circumstances in Northern Ireland at present, however, such a vacancy may be immediately available.

Training

58. The training of C.I.D. officers in Northern Ireland is again similar—indeed, in many respects identical—to the training in England. An aide to C.I.D. attends a two-week course in Northern Ireland on law and practical subjects relating to detective work. Following his permanent appointment to the C.I.D., he attends a further two-week course. Later, he will normally attend a 10-week detective course at a police training centre in England.

59. C.I.D. officers in Northern Ireland (like their colleagues in England) receive no formal training in the techniques of interviewing; the 10-week course in England includes instruction in the relevant law, but not in the art of interviewing as such. Of course, they learn informally from their colleagues (an officer new to interviewing duties accompanies a more experienced officer, although in Northern Ireland he may still be only a constable), and many junior officers in Northern Ireland have more experience in interviewing as such, measured simply in hours, than some senior detective officers in England; but this is the extent of their training.

60. In the next chapter, we consider the law relating to interrogation, and in the following chapter we review the existing regulations and force orders touching on the conduct of interviews.

CHAPTER 5

THE LAW RELATING TO ARREST, DETENTION AND INTERROGATION

61. Our purpose in this chapter is not to set out a general and complete statement of the law over the whole field of arrest, detention and interrogation, or to make a critical assessment of it, but to deal with those parts of the law which are relevant to police practice and procedure in relation to interrogation, so that the latter may be understood and assessed. The cardinal principles are that the police, in dealing with the private citizen, have only those powers granted by the law, and that those powers must be exercised within the bounds and limits imposed by the law, which provide sanctions and penalties for actions going beyond those limits. Those sanctions and penalties may be direct or indirect.

Direct sanctions

62. The most important direct sanction is that if a police officer himself commits a criminal offence in the course of dealing with a prisoner, he is liable to be prosecuted. If he physically attacks a prisoner without lawful justification he may be prosecuted for assault or related offences by the Director of Public Prosecutions. The right of prosecution by a private individual also remains and is occasionally exercised. Police officers are also subject to disciplinary regulations and force orders which make specific provision against ill-treatment of prisoners, and for penalties for those found to be in breach of these regulations or orders. In addition, an officer remains liable to a civil action for damages for unlawful arrest or imprisonment, or for personal injuries, if he ill-treats a prisoner. By section 14 of the Police Act (Northern Ireland) 1970, the Chief Constable of the R.U.C. is made vicariously liable in respect of wrongful acts committed by members of the police force under his direction and control.

63. It must also be noted that the United Kingdom is a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and has made declarations recognizing the competence of the European Commission of Human Rights to receive petitions from individual persons and the compulsory jurisdiction of the European Court of Human Rights. Any torture or inhuman or degrading treatment or punishment of a prisoner may therefore be made the subject of an application to the European Commission, as has in fact happened in the past, and ultimately of a decision by the European Court. Other international instruments to which the United Kingdom is a party also prohibit such ill-treatment, either of prisoners or generally.

Indirect sanctions

64. The indirect sanctions on the police in the conduct of interrogation arise when the prisoner after arrest and interrogation is brought to trial, and the prosecution seek to have admitted in evidence either oral admissions or

written confessions of guilt alleged to have been made by the prisoner. The manner in which and the means by which such a statement was obtained are crucial to the issue of the admissibility in evidence of such a statement. Ill-treatment of the prisoner may result in the statement being excluded; and, if this statement is the only or the principal evidence against the prisoner, he will then be acquitted. This is therefore one means by which, indirectly, a prisoner is protected against ill-treatment. Under the existing system, statements are always taken by police officers; there is no provision for statements to be taken by or in the presence of judicial officers. It must also be borne in mind that there is no requirement that statements made by the accused be corroborated by other evidence. The position remains that it is open to the court to convict a man on the strength of his statement, provided of course that the statement is first ruled admissible and is then proved to be true. We turn therefore to look at the provisions of the law which authorise the police to arrest, keep in custody and question a man, and so to obtain from him the evidence (in some cases the principal evidence) on which he may be convicted.

General powers of arrest

65. It is the policy of H.M. Government that terrorist offenders shall be brought to justice by judicial trial on charges of specific criminal offences. Special provision has been made by statute for changes in the ordinary processes of the criminal law in certain instances, but it must be borne in mind that the older powers of arrest remain in being and can be and are used by the police. Their powers of arrest without warrant (or "summary arrest") in respect of "arrestable offences"—i.e. broadly speaking, offences punishable by 5 or more years' imprisonment—appear in section 2 of the Criminal Law Act (Northern Ireland) 1967, as follows:

- "(2) Any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, in the act of committing an arrestable offence.
- (3) Where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be guilty of the offence.
- (4) Where a constable, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence.
- (5) A constable may arrest without warrant any person who is, or whom he, with reasonable cause, suspects to be, about to commit an arrestable offence."

The two points to be noted about these provisions are, first, that the power of arrest arises only in respect of a specific offence either committed or suspected to have been committed or about to be committed, and, second, that the re-iteration of the requirement of "reasonable cause" provides an objective element and pre-condition to the exercise of the power of arrest. The police have of course other powers of summary arrest, of no relevance to this inquiry.

Arrest under the Northern Ireland (Emergency Provisions) Act 1978

66. By contrast, one looks then at the powers contained in section 11 of the Northern Ireland (Emergency Provisions) Act 1978 (an Act which consolidates the provisions of earlier Acts of 1973, 1974 and 1975). Section 11 provides:

“(1) Any constable may arrest without warrant any person whom he suspects of being a terrorist.

(3) A person arrested under this section shall not be detained in right of the arrest for more than seventy-two hours after his arrest, and section 132 of the Magistrates' Courts Act (Northern Ireland) 1964 and section 50(3) of the Children and Young Persons Act (Northern Ireland) 1968 (requirement to bring arrested persons before a Magistrates' Court not later than forty-eight hours after his arrest) shall not apply to any such person.”

By definition, in section 31 of the 1978 Act,

“‘terrorist’ means a person who is or has been concerned in the commission or attempted commission of any act of terrorism or in directing, organising or training persons for the purpose of terrorism;”

and

“‘terrorism’ means the use of violence for political ends and includes any use of violence for the purpose of putting the public or any section of the public in fear.”

It is to be noted that the power of arrest under section 11 does not depend on the suspicion or commission of any specific offence or of any “scheduled offence”, and it arises on the subjective judgement of the constable. Taken together with the following section, section 12, and with Schedule 1 to the Act, it is clear that these powers of arrest were designed to be used as the start of a procedure leading to questioning, followed by detention without judicial trial (formerly referred to as “internment”). In fact the powers of detention without trial under the consolidated Act have never been used, and comparable powers under earlier Acts have not been used since 1975. But the powers of arrest under section 11 continue to be used as the start of a procedure leading to questioning, and, possibly, the charging of the prisoner with a specific criminal offence for which he will be tried in a court of law.

Scheduled offences

67. Section 13 of the 1978 Act provides that:

“(1) Any constable may arrest without warrant any person whom he suspects of committing, having committed or being about to commit a scheduled offence or an offence under this Act which is not a scheduled offence.”

The scheduled offences are specified in Schedule 4 to the Act. They consist of all the more serious offences, either at common law or by statute, of violence, damage, and the use of firearms and explosives, together with a very few additional offences specifically concerned with terrorism. These offences were scheduled because they are the kinds of criminal offences which terrorists commonly commit in pursuit of their aims. This category of “the scheduled

offence" is central to the Act, for it is in respect of this category that special provision is made in the Act for trial on indictment by judge alone at the Belfast City Commission, for limitation on the power to grant bail, and for other matters. It is to be noted that the power of arrest under section 13 arises in respect of a specific offence, but that the section does not grant any extension of the power to keep in custody following an arrest under this section, beyond the ordinary provision in Northern Ireland of 48 hours. It is also to be noted that the "Notes" to Schedule 4 make provision for certain of the scheduled offences not to be treated as such, in some instances, on the certificate of the Attorney General for Northern Ireland.

Power of arrest by members of H.M. Forces

68. Section 14 of the 1978 Act empowers a member of H.M. forces on duty to arrest without warrant, and detain for not more than four hours, a person whom he suspects of committing, having committed, or being about to commit any offence. Such an arrest is followed by the prisoner either being released or handed over to the police, who may charge him with an offence or re-arrest him under one of the sections empowering them to do so.

Arrest under the Prevention of Terrorism (Temporary Provisions) Act 1976

69. Further provision for arrest and custody is found in section 12(1) of the Prevention of Terrorism (Temporary Provisions) Act 1976. This Act applies in respect of most of its provisions, including section 12, to the United Kingdom generally. Section 12 provides:

"(1) A constable may arrest without warrant a person whom he reasonably suspects to be—

- (a) a person guilty of an offence under section 1, 9, 10 or 11 of this Act;
- (b) a person who is or has been concerned in the commission, preparation or instigation of acts of terrorism;
- (c) a person subject to an exclusion order.

(2) A person arrested under this section shall not be detained in right of the arrest for more than 48 hours after his arrest; but the Secretary of State may, in any particular case, extend the period of 48 hours by a further period not exceeding 5 days."

The references to sections 9, 10 and 11 of the Act refer respectively to offences concerning exclusion orders, financial contributions towards acts of terrorism and information about acts of terrorism. (The reference to section 1 is not applicable to Northern Ireland.) The definition of "terrorism" in this Act is the same as in the Act of 1978. It will be noted that, unlike section 11 of the Northern Ireland (Emergency Provisions) Act of 1978, section 12(1) above, by the inclusion of the word "reasonably", imparts an objective element into the conditions on which the power of arrest arises.

Use by the police of powers of arrest

70. We have been informed by the R.U.C. that it is their policy to arrest every terrorist suspect, even if caught in the act of committing a specific offence, under their powers either under section 11 of the 1978 Act or section

12 of the 1976 Act. One clear advantage to the police of doing so is to give them more time in which to carry out their investigations. Just as there is no reason in law why a terrorist suspect should not be arrested under section 2 of the Criminal Law Act (Northern Ireland) 1967 in connection with a specific offence, so too a person who is not a terrorist may be arrested under section 13(1) of the 1978 Act in connection with a scheduled offence. (As noted in paragraph 15 of this report, we have been concerned in this Inquiry with all persons arrested in respect of scheduled offences, whether under emergency legislation or under the ordinary law.) In any event the prisoner is going to be questioned, but it will have been noted that none of the provisions of the Acts we have cited makes any specific mention of the power to question or the purpose of the arrest, with one exception. It is to be assumed that the police carry out their questioning in pursuance of their common law power when investigating a crime to question any person from whom they think that useful information may be obtained, even if that person is in custody, so long as he has not been charged or informed that he may be prosecuted. The exception to which we refer above is to be found in section 18 of the 1978 Act which grants a power to stop and question, but we deal with this in paragraph 72 below. More importantly, the legislation makes no provision for the conditions in which the detention and questioning are carried out or for regulating the questioning procedures.

71. One final point concerns the power of the Secretary of State under section 12(2) of the Act of 1976 to extend the period of 48 hours by a further period not exceeding five days. The impression had been gained by some witnesses who gave evidence to us that after making an arrest under this section an application for an extension was automatically made by the police and was automatically granted by the Secretary of State. The police assured us that this was not so on their part⁶, but conceded that for administrative reasons it was necessary to prepare and possibly to present an application early in the 48-hour period in order to obtain the necessary consent before the expiry of it. As for the consent of the Secretary of State, we were assured that his consent was by no means automatically given and, if given, was not necessarily given for detention for the full 5-day period.

Admissibility of statements

72. It is a fundamental principle of the common law rights of the subject that although, as recorded above, the police have the right in investigating a crime to question any person from whom they think useful information may be obtained, the subject is under no legal duty to answer. We are only concerned here with this so-called "right of silence" at the pre-trial stage. In section 18 of the Act of 1978, power is granted to any member of H.M. forces on duty, or any constable, to stop and question any person for the

⁶ The figures show that, of the 487 cases in which persons had been detained under section 12 of the 1976 Act prior to 1 June 1978, extensions were either not applied for or not granted in 93 cases (see paragraph 77 of Lord Shackleton's report on the operation of the Prevention of Terrorism Acts, *op. cit.*, paragraph 3). Since the R.U.C. also have available the power under section 11 of the Northern Ireland (Emergency Provisions) Act 1978 to detain persons for up to 72 hours, it is of course to be expected that the Prevention of Terrorism Act should be used primarily for cases in which detention for a longer period is likely to be thought necessary.

purpose of ascertaining that person's identity and movements or what he knows concerning any recent explosion or any other incident endangering life, or concerning any person killed or injured in any such explosion or incident; and it is made a summary offence punishable by imprisonment or fine for that person to fail to answer to the best of his knowledge and ability. This is the only statutory exception, with which we are concerned, to the general rule that the subject is under no duty to answer questions or to make a statement, and that at his subsequent trial no inference adverse to him is to be drawn from his silence.

73. Where, however, in the course of interrogation a prisoner answers questions or makes a statement, and is proved to have done so, the provisions concerning the admissibility of such statements in evidence in the trial of scheduled offences appear now in section 8 of the Northern Ireland (Emergency Provisions) Act 1978 (they formerly appeared in section 6 of the Northern Ireland (Emergency Provisions) Act 1973.) This provides:

“(1) In any criminal proceedings for a scheduled offence, or two or more offences which are or include scheduled offences, a statement made by the accused may be given in evidence by the prosecution in so far as—

- (a) it is relevant to any matter in issue in the proceedings, and
- (b) it is not excluded by the court in pursuance of sub-section (2) below.

(2) If, in any such proceedings where the prosecution proposes to give in evidence a statement made by the accused, *prima facie* evidence is adduced that the accused was subjected to torture or to inhuman or degrading treatment in order to induce him to make the statement, the court shall, unless the prosecution satisfies it that the statement was not so obtained—

- (a) exclude the statement, or
- (b) if the statement has been received in evidence, either—
 - (i) continue the trial disregarding the statement; or
 - (ii) direct that the trial shall be restarted before a differently constituted court (before which the statement in question shall be inadmissible).

(3) This section does not apply to a summary trial.”

74. The background and origin of this provision are to be found in the report of the Commission chaired by Lord Diplock⁷. The phrase “torture or inhuman or degrading treatment” was taken by the Commission from Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In paragraphs 73 to 92 of their report, comment is made about how the courts in Northern Ireland had applied the common law in relation to the admissibility of statements in evidence in a very strict way, with the result of hampering the course of justice in terrorist crimes and of compelling the authorities to resort to detention in a significant number of cases which could otherwise have been dealt with effectively and fairly by trial in a court of law.

⁷ *Op. cit.*, paragraph 33.

The common law and the Judges' Rules

75. The statutory provisions which apply only in the trial of scheduled offences must be looked at against the background of the common law principle regulating the admission of prisoners' statements in evidence. This principle is conveniently set out in the statement of principles forming a preamble to the Judges' Rules⁸ (and stated not to be affected by those Rules) at paragraph (e):

"It is a fundamental condition of the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice or hope of advantage, exercised or held out by a person in authority, or by oppression."

The statement continues:

"The principle set out in paragraph (e) above is overriding and applicable in all cases. Within that principle the following rules are put forward as a guide to police officers conducting investigations. Non-conformity with these rules may render answers and statements liable to be excluded from evidence in subsequent criminal proceedings."

76. The Judges' Rules in the form made by the judges in 1964 were introduced in Northern Ireland in 1976 with the approval of Her Majesty's Supreme Court Judges; it was stated in a Parliamentary Written Answer given on 13 October 1976 that the Secretary of State had "agreed with the Chief Constable of the R.U.C. that these Rules should be brought into use in Northern Ireland on 8 October 1976". The form of this answer reinforces the point that the Judges' Rules, in Northern Ireland as in England and Wales, do not have the force of law but were made as a guide to police officers.

77. The Judges' Rules make specific provision for the administering of cautions to the prisoner at various stages of the questioning so as to make it clear to him that he is not obliged to say anything unless he wishes to do so, and make further provision for ensuring that any written statement is made of his own free will and only after he has been cautioned to the same effect. On other matters of particular relevance to this inquiry, it is stated that the Rules do not affect the principle

"(c) That every person at any stage of an investigation should be able to communicate and to consult privately with a solicitor. This is so even if he is in custody provided that in such a case no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so."

⁸ Last published by H.M.S.O. in 1978. The Rules themselves, in the 1978 edition, do not differ from those in the 1964 version, but certain detailed differences are to be found between the two versions in the Administrative Directions appended to the Rules. We refer to one of these differences when discussing the treatment of juveniles in paragraph 282 of this report.

In the Administrative Directions⁹ appended to the Rules it is further provided:

“7. Facilities for defence

- (a) A person in custody should be allowed to speak on the telephone to his solicitor or to his friends provided that no hindrance is reasonably likely to be caused to the processes of investigation, or the administration of justice by his doing so
- (b) Persons in custody should not only be informed orally of the rights and facilities available to them, but in addition notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.”

Paragraph 3 of the Administrative Directions provides that reasonable arrangements should be made for the comfort and refreshment of persons being questioned and that whenever practicable both the person being questioned and the officers asking the questions should be seated. Provision is made in paragraph 4 for the presence of a parent or guardian (or in their absence some person other than a police officer) during the interrogation of children and young persons. We shall have occasion to refer again to these provisions when we examine R.U.C. force orders relating to the conduct of interviews.

Burden of proof

78. We have looked at some of the comments made by lawyers and writers about these provisions, and noted their criticism that the position of prisoners has been weakened by the emergency legislation. Some practitioners, quoted in the Amnesty International report at page 64, appear to have taken the view that the provisions of section 8(2) of the Act of 1978 have placed on the defence the onus of establishing that a statement was obtained by “torture or inhuman or degrading treatment”. It is clear, however, that the burden on the defence is only an evidential burden, sufficiently discharged by putting *prima facie* evidence of torture or inhuman or degrading treatment before the court, whereas the overall burden of proof remains on the prosecution to prove that the statement was **not** obtained by torture or inhuman or degrading treatment. It was made clear by Lowry L. C. J. in *R. v. Hetherington and others* (1975) *N.I.*, at page 166, that that burden of proof has to be discharged by the prosecution not on a mere balance of probabilities but beyond reasonable doubt. Later in the same judgement, at page 168, the learned Lord Chief Justice comments:

“It is not for the defence to prove but for the prosecution to disprove beyond reasonable doubt in relation to each accused that he was not subject even to any degrading treatment in order to induce him to make a statement on which the Crown rely, or at least prove to the same standard that the statement was not so obtained. It will be noted that, just as where the statement is voluntary under the ordinary criminal law, the probable or even clear truthfulness of the statement will not cause it to be received in evidence unless the prosecution prove beyond reasonable doubt that it was voluntary so here the decision under section 6(2)¹⁰ must be based solely on how the statement is proved to have been obtained and not on whether it was true.”

⁹ The version given here is the 1964 version; that is, the version currently in use in Northern Ireland.

¹⁰ i.e. section 6(2) of the 1973 Act (now replaced by section 8(2) of the 1978 Act).

At page 170 he adds the comment:

"... in certain respects our criminal law demands that not only the evidence but the means of obtaining it shall be above suspicion."

79. The main burden of the criticisms of the emergency legislation is, however, first, that the laws have been changed so as to allow the holding of persons in custody for questioning purposes only; secondly, that the applicability of the Judges' Rules to questioning after arrest under section 11 of the 1978 Act and section 12 of the 1976 Act is in doubt; and, thirdly, that the provisions of section 8 replace the principle of voluntariness as the criterion for the admissibility of statements in evidence by a much less stringent test. Overall, it is claimed, the powers of the police and prosecution have in these ways been greatly strengthened, without the rights and safeguards of the rights of the prisoner having had the same attention. While we must repeat that it is no part of our task to review the emergency legislation or to suggest reforms of it, yet we have been concerned to find means whereby police practice and procedure in the conduct of interrogations might be more strictly defined, so as to remove doubt and uncertainty about what is or is not permissible. We first attempted to discover how the Northern Ireland courts have interpreted and applied the new provisions.

Practice of the courts

80. The courts have, of course, had to decide what effect, if any, the provisions of section 8 have had upon the application of the general law. In *R. v Corey and others*, on 6 December 1973, Lowry L. C. J. dealt with a submission that a statement should not be admitted in evidence on the grounds that the accused having been worn down by prolonged and repeated questioning, alternate threats and kindness, subterfuge and suggestions and leading questions designed to break his resistance and extract a confession, but falling short of torture or inhuman or degrading treatment, the court had a discretion to exclude from evidence statements made by the accused even if they could not be brought into the expressly forbidden category. The Lord Chief Justice commented:

"I agree with this general proposition since there is always a discretion, unless it is expressly removed, to exclude any admissible evidence on the ground that (by reason of any given circumstances) its prejudicial effect outweighs its probative value and that to admit the evidence would not be in the interests of justice."

This principle appears to have been universally followed in the courts. Lowry L. C. J. continued thus:

"Section 6¹¹, of course, has materially altered the law as to admissibility of statements by singling out torture and inhuman and degrading treatment. This is clear from the fact that such things have always made for the exclusion of an accused's statement since they deprive it of its voluntary character. Accordingly, section 6(2) would merely be a statement of the obvious if it did not, in conjunction with section 6(1), render admissible

¹¹ i.e. of the 1973 Act.

much that previously must have been excluded. There is no need now to satisfy the judge that a statement is voluntary in the sometimes technical sense which that word has acquired in relation to criminal trials."

81. In *R. v McCormick and others* McGonigal L. J., in the course of a ruling delivered on 19 May 1977 on the admissibility of certain statements made by the accused, first sought to define the terms used in section 6 of the 1973 Act by reference to the terms used in Article 3 of the European Convention and the meaning given to them by the European Commission of Human Rights¹², and quoted the definition given at page 377 of the report of the Commission in the case of *Ireland against the United Kingdom of Great Britain and Northern Ireland*, which in turn quoted the Commission's findings in the first Greek case thus:

- | | |
|-------------------------|--|
| "Inhuman treatment": | "at least such treatment as deliberately causes severe suffering, mental or physical (which in the particular situation is unjustifiable)" |
| "Torture": | "often used to describe inhuman treatment, which has a purpose, such as the obtaining of information, or confession, or the infliction of punishment, and it is generally an aggravated form of inhuman treatment" |
| "Non-physical torture": | "the infliction of mental suffering by creating a state of anguish and stress by means other than bodily assault" |
| "Degrading treatment": | "treatment or punishment of an individual may be said to be degrading if it grossly humiliates him before others or drives him to act against his will" |

The Commission, McGonigal L. J. said, had distinguished between acts prohibited by Article 3 and what it called "a certain roughness of treatment", and had considered that such roughness was tolerated by most detainees and even taken for granted. It "may take the form of slaps or blows of the hand on the head or face"

82. McGonigal L. J., after further discussion of these terms, added:

"The use of these terms is again underlined by the report's reference to a certain roughness of treatment which does not fall within any of the categories, and the examples which it gives further emphasise that treatment

¹² Since this judgement was delivered, the case of *Ireland against the United Kingdom of Great Britain and Northern Ireland* has also been the subject of decisions by the European Court of Human Rights. The Court's decision on whether the treatment in certain respects of detainees in Northern Ireland in August and October 1971 constituted "torture" is different from the opinion of the Commission on this point, and the Court's judgement contains fresh discussion of the meaning to be given to the terms used in Article 3 of the Convention. Insofar as section 8 of the 1978 Act falls to be construed in the same way as Article 3 is construed by the organs of the Convention, it is to be noted that, under the Convention, the judgement of the Court is authoritative.

to come within Article 3 must be treatment of a gross nature. It appears to accept a degree of physical violence which could never be tolerated by the courts under the common law test and, if the words in section 6 are to be construed in the same sense as the words used in Article 3, it leaves it open to an interviewer to use a moderate degree of physical maltreatment for the purpose of inducing a person to make a statement. It appears to me that this is the way the words must be construed and that that is the effect of the section."

The learned Lord Justice then continues in the next paragraph:

"That does not mean however that these courts will tolerate or permit physical maltreatment of a lesser degree deliberately carried out for the purpose of or which has the effect of inducing a person interviewed to make a statement. Not only would such conduct amount to an assault and in itself be an offence under the ordinary criminal law but it would be repugnant to all principles of justice to allow such conduct to be used as a means towards an end, however desirable that end might be made to appear. Nor, in my opinion, would those in charge or control of the interviewing officers themselves wish that to be so. While there are exceptions, in the vast majority of cases coming before these courts statements are made in interviews carried out with fairness and in circumstances which would render them admissible even under the common law test."

83. The learned Lord Justice then proceeds to discuss the trial judge's discretionary powers after a statement has passed the test of admissibility under section 6, and asserts:

"... it is the proper exercise of these powers which provide an extra-statutory control over the means by which statements are induced and obtained."

He then quotes from the judgement of McDermott J. in *R. v Irwin and others* (unreported), delivered in March 1977, which itself cites a number of leading cases, in which are set out the principles on which a judge exercises his discretion to exclude evidence that may be technically admissible, on the grounds of "unfairness" or "injustice" or "grave prejudice". It is common ground that in exercising this discretion regard must be paid to all the material facts and relevant surrounding circumstances. He then says that amongst the relevant circumstances which must be taken into account

"must be the test of admissibility and the standard of maltreatment required to exclude a statement under section 6."

He continues:

"If he (the judge) exercises his discretion without regard to section 6 he will in all probability exclude statements obtained in circumstances not considered by Parliament to warrant exclusion The effect of the exercise of the discretion if unfettered by the existence of section 6 might be, therefore, to negative the effect of section 6 and under the guise of the discretionary power have the effect of reinstating the old common law test insofar as it depended on the proof of physical or mental maltreatment. While I do not suggest its exercise should be excluded in a case of maltreatment falling short of section 6 conduct, it should only be exercised in such cases where failure to exercise it might create injustice by

admitting a statement which though admissible under the section and relevant on its face was *in itself*, and I underline the words, suspect by reason of the method by which it was obtained, and by that I do not mean only a method designed and adopted for the purpose of obtaining it, but a method as a result of which it was obtained."

The passage ends with a reminder of the importance of considering the effect of the conduct alleged on the particular individual concerned.

84. In the case in question, it is of interest to note that a statement made by a prisoner who sustained an injury to the nose during the course of questioning, which could have been caused by one blow, was excluded, not under section 6, but because

"it does appear to me that it is treatment that, if received, could have affected McNaught's mind and induced him to make a statement."

We have looked at reports of other cases to try to discover examples of the exercise of the courts' discretion which might provide a guide to interrogating officers and others as to what is permissible and what is not in the conduct of interrogation. Few of such rulings are fully reported. The reports appearing in the press are necessarily so condensed and selective that it is often difficult to discern precisely on what grounds a statement has been ruled inadmissible. It is nevertheless clear that any statement which may have been obtained by the use of physical violence or ill-treatment would not be admitted. In less extreme cases, there is the difficulty that, because the principles on which the discretion will be exercised are so broadly stated and the facts of individual cases are so infinitely various, it is hard to predict what the judge's ruling will be. The courts have on occasion expressly refused invitations by counsel to define the circumstances in which the judicial discretion to exclude otherwise admissible evidence might be exercised, on the ground that each case depends on its own particular facts. We do not venture to criticise the position adopted by the courts on this. This position is not peculiar to the courts in Northern Ireland, but is common to the English courts; and it is difficult to see what alternative course could be prudently adopted without tying the hands of the courts unduly. But looking at the position from the point of view of the control of police practice and procedure and from the point of view of the protection of prisoners, the uncertainty, despite the standards upheld and applied by the courts, about what is permissible and what is not, short of the use of physical violence or ill-treatment, may tempt police officers to see how far they can go and what they can get away with. It is this which has led us to consider whether the control exercised by the courts over the means by which statements are induced and obtained should be supplemented by more direct regulation operating immediately on the interviewing officers.

Application of the Judges' Rules

85. Although, as we have recorded in paragraph 76, the Judges' Rules 1964 were introduced in Northern Ireland in 1976, and the judges retain their discretion to exclude evidence obtained in breach of the Judges' Rules, the criticism is made—see, for example, the notes to the Act of 1978 in "*Current Law' Statutes Annotated*"¹³ by Professor Kevin Boyle—that their applicability

¹³ Published by Sweet and Maxwell, Stevens and Sons and W. Green and Son.

to an arrest made under section 11 of the 1978 Act is unclear, for the Rules "contemplate a specific offence, of which the person being questioned is suspected, whereas under this section the police may be aware of no such offence and be concerned only to gather intelligence through the interviews." The R.U.C. Code, which we deal with in the following chapter in more detail, provides that "where it is anticipated that statements resulting from interviews with a prisoner will be used in evidence in subsequent criminal proceedings, care must be taken to ensure that such statements are taken in compliance with legal requirements and the Judges' Rules". This provision seems to recognise by implication that the Rules have no application where the questioning is general. There are also many prisoners from whom statements are not obtained. Even where the Rules are applied, as the Note in Appendix A of the Rules states,

"The Rules do not purport to envisage or deal with the many varieties of conduct which might render answers and statements involuntary and therefore inadmissible. The Rules merely deal with particular aspects of the matter. Other matters, such as affording reasonably comfortable conditions . . . are proper subjects for administrative directions to the police."

We deal elsewhere with the ways in which the police exercise their discretion in applying the requirements of the common law, the Judges' Rules and the Administrative Directions, and consider further whether a more precise and detailed code of conduct is advisable both for the protection of prisoners and as guidance for the interviewing officers.

CHAPTER 6

POLICE REGULATIONS CONCERNING THE TREATMENT OF PRISONERS

86. In this chapter, we set out broadly the scope and content of the regulations issued by the Chief Constable and other most senior officers of the R.U.C. to members of the force concerning the treatment in custody of the prisoners with whom this report is concerned. The R.U.C. Code, which is the standing body of instructions with which every member of the force is required to comply, contains 195 paragraphs on this subject, covering the treatment of prisoners from arrest to release or transfer to court; and further instructions exist which relate specifically to the two police offices. We have not attempted to deal with every matter covered in these regulations and instructions. In particular, we have largely left over to the following chapter the question of medical examinations, in view of its extreme importance for our inquiry. We do aim in this chapter, however, to give the reader a fair idea of the main steps in a prisoner's progress through police custody, starting at the point when he is brought into a police station or police office by the arresting officers and ending with his being charged or released. We aim also to outline the main measures on which reliance is currently placed with a view to the prevention of ill-treatment or abuse. Finally, we refer also to the regulations concerning access by solicitors and relatives and a number of other subjects.

General principles governing the treatment of prisoners

87. Before getting down to the detail, it may be helpful to try to isolate the general principles upon which police stations and police offices are organised so far as the detention of prisoners for questioning is concerned. The first general matter which is of interest is the division of functions between the uniformed branch and the detective branch of the R.U.C. It is traditional in the police forces of the British Isles that responsibility for the custody and welfare of prisoners, and for dealing with their needs and requests and for outside enquiries in relation to them, lies with the uniformed branch, while responsibility for questioning them lies with detective officers. This division of function is quite sharply drawn in the instructions to the R.U.C., although on many issues (such as access to solicitors) there is provision for members of the uniformed and detective branches to consult with each other, and in the event of a disagreement it may be a moot point whose view shall prevail.

88. Secondly, experience shows that a major element in ensuring that prisoners are properly treated is meticulous documentation, so that there is absolutely no doubt where and in whose care the prisoner is at a particular time.

89. Thirdly, there needs to be provision for proper supervision of both uniformed and detective staff so as to ensure that the procedures laid down are actually observed, and that nothing untoward occurs which the regulations and instructions did not foresee. Much of this report is, of course, concerned with the question whether the present provision for supervision is adequate,

but in this chapter we attempt simply to describe, and not at this stage to assess, the present level of supervision. In this context, however, it is worth recalling a further matter of fact of general application to the questioning of prisoners in police forces in the British Isles: this is that the actual interview process is inviolate in the sense that interviews are conducted by a limited number of police officers out of the sight and hearing, not only of members of the public and the prisoner's friends and advisers, but also of other police officers. To a limited extent, as we shall see, the procedures in the R.U.C. already depart helpfully from this general practice. A major question for this inquiry has been whether, in the special circumstances of investigating terrorist crime in Northern Ireland, further inroads on the general practice need to be made.

Main features of detention for questioning

90. At this stage we offer a simple sketch of what actually happens to an arrested person from the time he is brought into a police station or police office in Northern Ireland to the time he leaves it. The steps in his progress are intended to be the same in any police station in the Province, having regard to minor differences of layout and accommodation, but our description perhaps applies most closely to Castlereagh and Gough since they are the establishments that we have studied with particular attention. We also concentrate on prisoners to whom the Emergency Provisions Act or Prevention of Terrorism Act applies.

Reception

91. On arrival, the prisoner is the responsibility of the uniformed staff. He is taken to a reception room where he is thoroughly searched and all property in his possession is taken from him. If there is good reason to do so (for example, if forensic tests need to be made), his clothing may be taken from him and alternative clothing provided. It is the duty of the senior uniformed officer at this stage to check that his arrest is lawful, to inform him of the reason why he has been detained (in the case of an arrest under emergency legislation the explanation is usually in broad terms: for example, that he is suspected of being a terrorist) and to inform him of his rights whilst in custody. This is done at present by reading over to him and showing him a typed and cyclostyled notice, which contains information about bail, communication with solicitors and friends, the taking of finger-prints, identification parades and legal aid. Either at this stage or later, the prisoner will be photographed. (The reception room also generally contains the finger-printing apparatus, but finger-printing is done by detective officers at some later stage of the prisoner's detention rather than by uniformed police at the outset.)

Informing relatives

92. There is no statutory entitlement in Northern Ireland, as there is now in England and Wales, for persons arrested by the police to have a relative or other person informed of their arrest, but there is provision in the R.U.C. Code for this to be done unless it is either against the wishes of the prisoner himself or is likely to hinder investigations or interfere with the administration of justice. Most prisoners are, in fact, arrested at home and so the question of informing their immediate families does not arise.

Documentation

93. At this stage also, the documentation relating to the prisoner's detention in custody is begun. The police officer who arrested him will already have been required to complete a short form relating to that event, but now a much larger set of forms, which all go under the heading of "Prisoner Arrest Form", is opened. At this stage, the information put on to the form will relate to his arrest, his immediate physical condition, whether his relatives have been or are to be informed about his arrest, and what property has been taken from him. Eventually, the form will come to comprise a virtually complete record of every event that befalls the prisoner whilst he is in custody, including a note of any medical examinations conducted, a record of which uniformed officer is in charge of prisoners at all times throughout his detention, a record of interviews showing the date, precise times and place of interviews and the names of the interviewing officers on each occasion, a record of meals and other refreshment supplied to him, a record of any requests or complaints made by him or on his behalf, and a form on which he is finally invited to state whether he has any complaints. As we shall see in the following chapter, certain records are also attached relating in more detail to medical examinations. If he is eventually transferred to another police station or police office, a separate record is made of this fact, and the police station receiving him must sign a "receipt"; and all the documents mentioned above travel with him. At Castlereagh and Gough, in addition to the forms relating to each individual prisoner, an Occurrences, Reports and Complaints Book is kept for the office as a whole, in which additional details are recorded for which there is no provision on the Prisoner Arrest Form, such as private medical examinations, enquiries by relatives or other persons, etc.

94. As we shall see in more detail in the following chapter, the next step in the case of a person arrested under emergency legislation or suspected of a scheduled offence is that a medical examination will be arranged as soon as possible after arrest and reception. No interrogation is allowed to take place until after this medical examination¹⁴. If there is a delay, the prisoner is put into a cell to wait his turn. If he is seen by the medical officer at once, he is taken to a cell immediately thereafter.

Detention in cells

95. The basic rule is that a prisoner will be kept in a cell except when required for interview. No interview may take place in a cell, and the only persons allowed to enter the cell besides the prisoner, except in cases of emergency, are the uniformed officer in charge of prisoners, his supervisory (uniformed) officers and the medical officer. Apart from interviews, the only occasions for which a prisoner will be called forth from his cell are conversations with or examination by a medical officer or other doctor (for which a separate medical examination room is provided), use of toilet facilities, and meetings with a solicitor or with relatives or friends if such be allowed.

96. A good proportion—mostly between a half and two-thirds—of the prisoner's time in custody, once the flurry of the reception procedures are over, therefore consists of waiting in his cell or sleeping there. Whilst there he

¹⁴ We deal in the next chapter with what happens if a prisoner refuses to be medically examined.

has no watch or clock, no reading matter and no access to radio or television. There is no provision for exercise. Meals are supplied four times a day, either from the same canteen as supplies the police officers on the premises or from outside in the case of small police stations, and it seems from the first-hand accounts that we have been given that it is chiefly by the occurrence of meal-times that prisoners judge the passage of time.

Procedures for interviews

97. Detective officers who require to interview the prisoner must first—that is, we suppose, at the outset of every interview, although this is not made explicit—obtain the approval of the uniformed officer in charge of prisoners. At Castlereagh and Gough, the uniformed officer giving approval must be of the rank of inspector or chief inspector. The names of the interviewing officers are recorded on the Prisoner Arrest Form, together with the times at which the prisoner went to and returned from the interview. The standing orders for Castlereagh and Gough prescribe that interviews should “normally” take place between 8.00 a.m. and 12 midnight; that where an interview commences before 12 midnight it may be continued after that hour, but only with the approval of the Duty Inspector, who must then remain on duty until the end of the interview; and that if it is desired in exceptional circumstances to begin an interview between 12 midnight and 8.00 a.m., and there is no inspector on duty, the inspector should be required to return to the police office before the interview begins. These requirements relating to the hours within which interviews must be conducted are not, however, reflected in the R.U.C. Code, and it seems therefore that they are not necessarily applicable outside Castlereagh and Gough. The Code does provide, however, that a uniformed inspector or chief inspector shall remain in charge of any police station at all times when terrorist suspects are being interviewed there.

98. When the approval of the uniformed staff is obtained, it is the responsibility of the senior interviewing officer to give his name and those of any other persons engaged in the interview so that these may be entered on the Prisoner Arrest Form. The uniformed officer then unlocks the cell and gives the prisoner into the custody of the interviewing officers who will take him to an interview room. The Code provides that, during the period of interview, the interviewing officer (or, where there is more than one such officer, the senior officer) is responsible for the prisoner's safe custody, general welfare and treatment.

Conduct of interviews

99. From this point on the Code, and the standing orders for Castlereagh and Gough, are to a large extent silent regarding the detailed conduct to be observed specifically by interviewing officers. This is not to say that they are exempt from the provisions of the Code, etc., for the general provisions of the Code to which we refer below, and some of which are of the highest importance, apply to them as to all other police officers engaged with prisoners. But whereas many of the other provisions of the Code can only sensibly be read as applying to the uniformed staff, there is no corresponding body of provisions which apply only to interviewing officers and do not equally

apply to uniformed staff. This fact reflects the general position in police forces, to which we referred at the beginning of this chapter, that the number of persons who have access to interviews is strictly limited.

100. The Code lays a duty on interviewing officers to maintain records as required and in particular to note carefully any complaints or requests made by the prisoner and to report them to the uniformed staff as soon as possible.

101. It is prescribed in the Code that, where it is anticipated that statements resulting from interviews will be used in evidence in subsequent criminal proceedings, such statements must be taken in accordance with legal requirements and the Judges' Rules. Except where circumstances compel otherwise, interviews are not to be carried out by one officer alone. Where the prisoner has been formally charged Rule 3 of the Judges' Rules (requirement to caution, and restrictions on questions which may thereafter be put about the offence in question) must be observed. (In practice, prisoners are not charged before leaving Castlereagh or Gough, as we shall see later in this chapter.) Interviewing officers are forbidden "unless there are compelling security reasons to the contrary" from taking firearms into an interview room. Special care is enjoined when dealing with persons who appear to be mentally sub-normal (the provision in the R.U.C. Code on this point is similar to the new paragraph about interrogation of mentally handicapped persons which appears in the Administrative Directions appended to the 1978 edition of the Judges' Rules).

102. This is about the extent of the regulations applying specifically to interviewing officers. As mentioned previously, however, they are subject to other regulations which apply equally to all police officers.

Prohibition of ill-treatment

103. For our purpose, the most important of these are the regulations which prohibit ill-treatment. These, of course, add little if anything of substance to the criminal and civil law which we have already reviewed in Chapter 5 of this report, and with which all police officers may be assumed to be familiar. It seems to us entirely necessary and proper, however, that these should be expounded and, if appropriate, expanded in any instructions to police officers about the treatment of persons in custody.

104. It is stated in the Code that a police officer must not subject a prisoner to any degrading physical or mental ill-treatment or permit any other person to do so. What constitutes degrading physical or mental ill-treatment is nowhere defined; but the circumstances in which force may legitimately be used against a prisoner (for example, to prevent his escape or to secure his compliance with reasonable directions) are specified, and the use of force otherwise is prohibited. The use of force against a prisoner, for whatever reason, is required to be recorded on the Prisoner Arrest Form, and any member of the force to whose notice it comes that a prisoner has been ill-treated is required at once to report the matter to his superiors. Elsewhere in the Code, it is further provided that prisoners in police custody must be treated with the most humane consideration which their situation and their safety, and compliance with directions, allow.

Other relevant provisions

105. Elsewhere again in the Code, it is provided that prisoners should be afforded all reasonable comfort and, in particular, that they should be given adequate opportunity to sleep. The Code also provides that prisoners should not be allowed to remain for long periods without food. What constitutes a long period is not specified (although in practice food appears to be provided at routine intervals); nor is it entirely clear, in the case of a prisoner being interviewed, upon whom the duty to ensure that he gets food at the right time is placed.

106. The Code contains further provisions against the use of improper language towards or in the presence of prisoners and against frivolous conversations with them.

Supervision

107. In this section, we summarise the current regulations and practice concerning supervision of the treatment of prisoners in custody. It is not always entirely clear, either in the R.U.C. Code or in the standing orders for Castlereagh and Gough, which measures are directed towards the supervision of junior uniformed staff and which towards the supervision of interviewing officers. It is, of course, entirely proper and necessary that both should be subject to supervision, and the same measures may indeed be apposite to both objects. We, however, start our inquiry from the following standpoint: the supervision of uniformed staff appears to us to be entirely adequate, and we have neither received nor heard about any complaint of ill-treatment by them. It is, on the other hand, against interviewing officers that a great volume of complaints is directed. We accordingly direct our attention primarily to measures intended to secure the good conduct of interviews rather than the better management of police offices and police stations in general.

Supervision of interviews by senior detective officers

108. We have already touched on this subject towards the end of Chapter 4. It falls to be recorded here, however, that the R.U.C. Code, and the standing orders for the police offices, do not prescribe in any detail the duties of senior detective officers regarding the conduct of interviews by their subordinates. We understand that a similar position obtains in police forces in Great Britain. It has to be recalled, however, that there, to a much larger extent, senior officers are actually engaged in interviews.

109. In practice, we have been shown records kept separately for C.I.D. purposes, as well as on the Prisoner Arrest Form, of which officers are interviewing each prisoner. At Castlereagh and Gough, a member of the C.I.D. known as a collator records on a wall-chart the officers involved and the starting-time of all interviews in progress. We are informed that a senior C.I.D. officer is usually on the premises when interviews take place. As matters stand, he has the best opportunity of any police officer to check what is actually going on in an interview room, since he alone has the right to enter it whenever he cares to and to stay and join in the conversation for as long as he considers

necessary. If this supervisory duty of senior C.I.D. officers is carried out conscientiously, it obviously constitutes a considerable safeguard against misbehaviour by officers of junior rank. The mere presence of senior C.I.D. officers in the building ought to act as a deterrent, since the officers in the interview room cannot know when they will choose to enter. It is only fair to add, however, that such visits to the interview room appear to take place comparatively rarely. Senior detective officers have, of course, a range of duties to attend to in relation to investigations in progress, and cannot make it their main business to patrol the corridor or to sit in on interviews as mere observers.

Supervision by uniformed officers

110. In normal circumstances the senior uniformed police officer concerned with prisoners at a police station might be a sergeant. An inspector or more senior officer, if he were present, would have operational responsibilities in this regard if a special occasion arose, but he would not be engaged with the custody of prisoners on an hour-by-hour basis.

111. In Northern Ireland, however, and when terrorist suspects or persons suspected of scheduled offences are being interviewed, the R.U.C. Code now prescribes that a uniformed inspector or chief inspector shall take charge. This measure was introduced in November 1977. Its purpose was explicitly stated to senior officers at that time to be to supervise interviews while prisoners were in custody. It was stated that supervision of interviews would normally be on a listening basis but that, where there were "spyholes" in interview room doors, these should be utilised. It was directed, however, that only in the event of the supervising inspector becoming suspicious that an actual breach of the law was occurring should he enter the interview room.

112. At Castlereagh and Gough, the senior uniformed officer concerned exclusively with the custody of prisoners is now—in the case of Gough, since April 1978—a chief inspector. Obviously, these officers cannot be on duty all the time when prisoners are being interviewed, and still less when the prisoners are sleeping. But each has two inspectors to assist him, who cover the time when prisoners are being interviewed on a shift basis. At nights, a sergeant will normally be the senior uniformed officer on duty. Whilst the chief inspector is in charge of the police office, and is expected to be active and about the place, the actual business of supervising interviews falls largely to the inspector on duty. He too will of course have other duties.

113. It is further to be noted that, at Castlereagh, the interview rooms are arranged along two corridors rather than one; clearly the supervising inspector cannot patrol both at once. Outside Castlereagh and Gough, facilities for supervision in practical terms are not as good as at the police offices. At one police station that we visited, an inspector wishing to remain within sight and hearing of the interview would have simply to stand outside the door in the station yard.

114. As already mentioned, the only facility that supervising officers have for visual observation is the "spyhole" in the interview room door; no other means of seeing into the room is available. 13 of the 21 interview rooms

at Castlereagh had these fitted on construction in March 1977, and the rest of the rooms were equipped with them in July 1978. All the interview rooms at Gough were fitted with "spyholes" in April 1978. Elsewhere our impression is that many interview rooms have "spyholes", but that a considerable minority do not. In some places outside Castlereagh and Gough, where interview rooms have been adapted from other uses, the arrangement of the rooms is such that observation of the interviewers and prisoners is obstructed by furniture.

115. As to supervision on a listening basis, the rooms at Castlereagh and Gough are by no means soundproof. While conversation in normal tones is not audible, or at least intelligible, from outside, anything in the nature of a commotion would certainly be audible, and we have been informed that raised voices can be understood. It is also relevant that the footsteps of someone approaching the outside of the interview room can be clearly discerned from inside. Outside Castlereagh and Gough, the physical properties of interview rooms seem to vary; on the whole, we would venture the guess that most are more soundproof because their construction is of a more solid and permanent character.

116. It appears, in fact, that raised voices emanating from within the interview room are not unusual and are not necessarily heard with alarm by the supervising officers outside. Interviewing officers have also told us that they sometimes use emphatic gestures, such as the clapping of hands or banging the table, to drive home a point; they assert that the resulting noise has on occasion been misinterpreted. Our general impression, however, is that some uniformed officers do not often take action to intrude on such scenes, and may not always take special note of them.

117. While the original instructions to supervising inspectors forbade them to enter interview rooms unless suspicious that an actual breach of the law was occurring, the consolidated version which has now been inserted into the R.U.C Code is slightly revised. It is now stated that, unless for good and sufficient cause, the inspector need not enter the interview room while an interview is in progress. No definition is offered of what constitutes good and sufficient cause.

Supervision of prisoners

118. We should not conclude this section of our report without referring to the considerable level of provision in the R.U.C. Code, etc., for ensuring that prisoners do not injure themselves or succumb to sickness or other mischance. Regular and frequent observation of prisoners in their cells for this purpose is, of course, a commonplace in police work. As noted later in this report, however, the R.U.C. are perhaps especially emphatic about the possibility of self-inflicted injury (most of our police witnesses spoke of the matter at some length), and the provisions of the Code reflect this special emphasis.

119. First, the uniformed staff are required to inspect any cell about to be occupied by a prisoner so as to ensure that nothing is present that ought not to be there and that all the fittings are intact. They are also required

to examine at frequent intervals all cells, interview rooms, toilets and corridors used by prisoners so as to ensure not only that prisoners cannot escape but also that they do not injure themselves. Secondly, prisoners not in the company of police officers must be visited at least once every hour, and terrorist-type prisoners more frequently, by the officer in charge of prisoners so as, among other things, to prevent self-inflicted injury. Any irregularity, including evidence that a prisoner has sustained injury or has attempted to injure himself, must be reported, and a note made on the Prisoner Arrest Form together with the observations of any doctor who examined him following this attempt. Finally, prisoners are not allowed to retain in their possession any article with which they might be likely to injure themselves (lighters or matches, for example, may not be kept), including eating utensils.

120. The standing orders for Castlereagh and Gough offer a further slight variation on this theme, for it is there stated that should any "untoward incident" occur during the interview of a prisoner, the member of the force concerned must report it immediately to the Duty Inspector. An "untoward incident" is defined as including an attack by a prisoner on a police officer or an attempt by a prisoner to inflict injury on himself as well as complaints by prisoners of ill-treatment by the police. This instruction would appear to apply to detective officers rather than to uniformed staff, but this is not made explicitly clear.

Visits by senior police officers

121. Although the C.I.D. and Special Branch officers engaged in interviewing are under the command of their own senior officers, who may be from a different division, the overall management of the police station or police office falls within the responsibility of the Divisional Commander of the area where it is situated. They and their sub-Divisional Commanders are required, alongside the officers directly in charge, to ensure so far as possible that breaches of the instructions are not committed within the areas of their command, and they are required to visit the police offices and stations where prisoners are held as often as necessary to satisfy themselves on this score. Assistant chief constables and senior C.I.D. and Special Branch officers are subject to the same requirement. We have been informed that such visits take place quite frequently.

Access to prisoners by persons outside the police service

Solicitors

122. As noted in Chapter 5 above, it is stated as a principle in the preamble to the Judges' Rules that a person subject to investigation, even if he is in custody, should be able to communicate and consult privately with a solicitor provided that no unreasonable delay or hindrance is caused to the processes of investigation or the administration of justice by his doing so. The R.U.C. Code in turn states that a prisoner must be allowed to see his solicitor unless:

- (1) the prisoner does not wish to see the solicitor, or
- (2) the visit is likely to hinder the investigation of a crime or the administration of justice or is calculated to disrupt or delay police investigations or the course of an interview or interviews, or
- (3) is likely to prevent or delay further arrests.

The decision rests formally on the Duty Inspector, but there is provision for him to consult the detective officer in charge of the case.

123. In practice, solicitors are not admitted to see terrorist suspects before they are charged. We have been left in no doubt about this by the evidence which we have received from solicitors, former prisoners, other members of the public and the R.U.C. themselves. The police evidence has been various on the question whether the inspectors have a true discretion in this matter or not. We do not feel obliged to pursue this question, however, because for our purpose it is sufficient to note that their discretion, if they do really possess it, is always exercised so as to produce the same outcome.

Relatives

124. The conditions in the R.U.C. Code described in paragraph 122 above are applied equally to the admission of a prisoner's relatives. Additionally, conditions are applied to visits by relatives—that not more than one relative at a time should visit the prisoner, that the visit should be within the sight and hearing of a police officer and that no article should be handed over except when authorised—that are obviously good practice. We have not had occasion to assess the working of this provision of the Code in detail, but it does appear that relatives are from time to time admitted. Subject to certain conditions, relatives and friends may also send in food, confectionery, refreshments or tobacco.

Procedures for discharge or transfer

125. At this point, we revert to our sketch of the stages of a prisoner's transition through a police station or police office. Whether because the time has come when it is proper to charge him with an offence, or because further interviews are judged to be unprofitable, or simply because the maximum time allowed in law for keeping him has expired, the time will come when he is due to leave the premises. The last events that befall him before doing so (some of which we consider in more detail in subsequent chapters) are a medical examination (assuming that he agrees to one), a conversation with a uniformed officer (if the prisoner has made a complaint) and the restoration of his personal property.

126. If he is to be released from police custody altogether, he will be offered police transport home (which he may take or leave) and that is that. If he is to be charged, the arrangements vary from place to place. At Castle-reagh, prisoners are not charged on the premises but are first taken to the police office¹⁵ at Town Hall Street, Belfast, which adjoins the Belfast Magistrates' Court. Elsewhere, the prisoner may either be charged at the police station where he has been detained for questioning, or taken for that purpose to a police station in the area where he is alleged to have committed crime. To the extent that the procedure described in this chapter applies to any term of detention in police custody, including detention after a charge is given, the prisoner's next journey may of course be to the magistrates' court.

¹⁵ The term "police office" is here used in a sense different from that in which we have used it elsewhere in this report.

127. The vehicles used for the transportation of prisoners who are still in police custody are one 14-cell prison van, one 3-cell transit van used exclusively for carrying prisoners from Castlereagh to Town Hall Street, and twelve additional transit vans modified to carry up to eight prisoners. Prisoners of different political persuasion do not travel together in such vans. A second 14-cell vehicle is at present on order and it is hoped eventually to replace all the modified transit vans with these cellular vehicles. This is intended to reduce the possibility of prisoners inflicting injuries on each other and subsequently alleging that these injuries were inflicted by police officers.

Women

128. Women are interviewed in the same buildings as men, although at Castlereagh and Gough separate sets of cells are reserved for their use. To our surprise, there is no provision requiring a woman officer to be present when a woman suspect is being interviewed. The Code makes special provision for the treatment of women in the course of being searched: female prisoners must be searched by women officers and not in the presence of males. It is also provided that, when a woman is in custody, an additional officer shall be in attendance with the officer in charge of prisoners, unless the officer in charge of prisoners is already a female. There is no requirement in the Code that this additional officer should be female, but the standing orders for Castlereagh and Gough provide that a policewoman should be appointed as gaoler to guard female prisoners. It is further provided in the Code that a male officer should not enter a cell or room in which a woman prisoner is detained except in the presence of another police officer (save in an emergency). Again, there is no requirement that the additional officer should be female.

Juveniles

129. The Code contains few provisions relating specifically to juveniles. The only one of particular interest in the present context relates to informing the parents or guardian of a juvenile that he has been arrested, where it is stated that only very exceptional circumstances may prevent such action being taken. We have enquired about the practice followed with regard to the presence of parents during interviews. The revised Administrative Directions attached to the 1978 edition of the Judges' Rules state that as far as practicable children and young persons under the age of 17 years should only be interviewed in the presence of a parent or guardian, or in their absence, some person who is not a police officer and is of the same sex as the child. It appears that, as in the case of access by solicitors, the R.U.C. draw a distinction, in fact if not in principle, between "terrorist" and "non-terrorist" cases: in the former, parents appear rarely to be admitted into the interview room, at least when the juvenile is over 15, because of the probability that they will advise silence.

CHAPTER 7

MEDICAL EXAMINATIONS

Need for medical examinations

130. A most important part in the arrangements for holding suspects in police custody is played by the system of medical examinations. This system has to serve a number of distinct objects, for medical presence and medical examinations operate alike for the benefit of the police and of the prisoner and for the administration of justice. For the police, there is first the general requirement that they should have facilities for safeguarding the health and wellbeing of the persons in their charge, but there is also a powerful secondary requirement to obtain independent and objective evidence in order to assist them and the Director of Public Prosecutions in deciding whether a complaint by a prisoner has merit and, if it appears to have none, to assist the Crown in rebutting any allegation of ill-treatment which he may make at his subsequent trial. For the prisoner, medical services must be available in the event of his needing them, and the fact that he will be medically examined may be taken to be a check against possible abuse by the police. In the event of a justified complaint about his treatment in custody, a medical examination will be his best help since in the normal course of events the doctor will be the only person to see him who is not a member of the police force. Finally, and for the same reasons, those who have to administer justice—and, through them, the public—benefit in ascertaining the truth when medical reports are available in criminal proceedings against the prisoner or against a policeman or in civil proceedings by a prisoner against the police.

Medical examinations of prisoners generally

131. The R.U.C. Code imposes upon the police who are responsible for receiving a prisoner into custody, and for looking after him whilst there, a number of requirements which are applicable to all prisoners, and not just to prisoners suspected of scheduled offences.

132. A medical examination of the prisoner is required to be arranged as soon as possible after his arrival at a police station or police office in any of the following circumstances:

- (a) where the prisoner appears to be suffering from any illness or injury or complains to the police that he is so suffering;
- (b) where the prisoner is considered to be suffering from the effect of alcohol or drugs;
- (c) where the prisoner alleges that he was assaulted before, during or after arrest;
- (d) where a police officer alleges an assault by a prisoner (in which case the police officer must also be medically examined);
- (e) where the prisoner is alleged to have committed an offence and it is likely that a medical examination will yield evidence tending to prove or disprove the prisoner's guilt, and it is considered advisable that such examination be carried out;

- (f) where the prisoner has been arrested by a member of H.M. Forces or any person or agency other than the police and is delivered into police custody; or
- (g) where for any other reason the person in charge considers it advisable.

133. The police are also required by the Code to arrange for a medical examination of the prisoner at any time **after** he is taken into custody if circumstances as described at (a), (b), (c), (d) or (g) above should arise, or arise again. In no other circumstances are medical examinations prescribed for prisoners generally.

134. Police regulations concerning medical examinations by a prisoner's own doctor and on his own behalf are also expressed as applicable to prisoners generally, and not just to prisoners suspected of scheduled offences; but for convenience we refer to these later in this chapter.

Special requirements for prisoners arrested for scheduled offences or as terrorist suspects

135. The R.U.C. Code imposes a number of additional requirements concerning medical examinations in the case of prisoners arrested under emergency legislation or for scheduled offences. These special provisions are applicable to all the prisoners whose treatment falls within our terms of reference.

Initial medical examinations

136. The R.U.C. Code makes it mandatory upon the police, in the first place, to arrange a medical examination for a terrorist suspect or person suspected of a scheduled offence, even if none of the conditions listed in paragraph 132 above applies, as soon as possible after he is taken into police custody. This means, if possible, immediately after the initial reception procedures (for which see above, Chapter 6), but in any event the intention is clearly that the prisoner shall be medically examined before he comes into contact with any C.I.D. or other non-uniformed police officer. If there are more prisoners than the medical officer can deal with immediately, they will have to wait in cells until they can be seen by him. We understand that a full clinical examination takes upwards of 25 minutes (but see below for extra time that may be taken up in explaining the procedures to the prisoner). Following a large early morning arrest operation, it may not be possible to deal with all the prisoners until the early afternoon, and interrogation may be correspondingly delayed.

Medical examinations upon transfer or discharge from police custody

137. The R.U.C. Code further requires that a prisoner arrested under emergency legislation or for a scheduled offence who is released or transferred from a police station or police office, whether to another police station or police office or to freedom or elsewhere, shall be medically examined immediately before release, delivery or transfer. No interrogation of a prisoner may take place after this final medical examination, and once it is concluded the prisoner merely awaits release or transport from the police station or police

office. When a prisoner makes a complaint about his treatment in custody, however, he not infrequently makes it to the medical officer in the course of his final examination. If so, his final exit from the premises may be delayed whilst a uniformed police officer seeks to get a written statement of his complaint from him.

138. As noted in Chapter 6 above, when the decision has been reached that a prisoner shall be charged, he may be moved to another police station for that purpose. If so, the mandatory procedures for initial medical examinations again become operative, and the prisoner will again be medically examined as soon as possible after arrival at the new location.

Other intermediate medical examinations

139. It is stated in the R.U.C. Code that prisoners will, on request, be permitted reasonable access to a medical officer and that on request a medical officer should have access to a prisoner at all reasonable times. We understand that the prisoner may make such a request either to officers engaged in interviewing him or to uniformed officers at some other stage. The medical officer, for his part, will make his arrangements through the uniformed staff.

140. Although this is not reflected in the R.U.C. Code, the terms of service of the Senior Medical Officers at Castlereagh and Gough as set out by the Police Authority state, amongst other things, that each prisoner shall where possible be visited each day by a doctor and offered a medical examination.

The organization of medical services

141. The police offices at Castlereagh and Gough each have the services of a Senior Medical Officer. These are members of the Northern Ireland Department of Health and Social Services, and regard the Chief Medical Officer at that Department as their professional head. But they are seconded to the Police Authority for Northern Ireland, who are therefore their employers and who meet the cost of their salaries, etc. They are supported by deputies who are retained by the Police Authority to act in their absence and assist them as necessary. At Castlereagh, relief cover is provided between 5.00 p.m. and 8.00 p.m., at weekends between 8.00 a.m. and 8.00 p.m. and at other times when the Senior Medical Officer is unavoidably absent or when extra help is needed, by a group of general medical practitioners; and between 8.00 p.m. and 8.00 a.m. by a group of hospital doctors. At Gough, a group of four local general medical practitioners act in support of the Senior Medical Officer as necessary.

142. Elsewhere in the Province, different arrangements apply: no police station or police office apart from Castlereagh and Gough has a full-time medical officer. In Chapter 9 of this report, we consider the factors for and against using police offices or local police stations for interrogation. It is worth noting here that the presence of a medical officer throughout a large part of the working day, together with the assured availability of deputy medical officers at other times, is for us a powerful factor in favour of using the police offices.

143. Outside Castlereagh and Gough, for the most part, the police call as necessary upon the services of members of the Association of Forensic Medical Officers of Northern Ireland (formerly called police surgeons) who have contracted with the Police Authority to carry out this work. (Most of these are otherwise engaged in general medical practice. All are independent of the police in the same sense as the Senior Medical Officers.) In some places, however, there is no appointed Forensic Medical Officer available for such work. At Omagh, for example, we found that a panel of local medical practitioners have agreed to make themselves available and are called upon in rotation.

Medical records

144. After each occasion when a prisoner has been presented to him for examination, the medical officer makes short notes about the prisoner's general state of health, fitness for interview, special medication or diet and any allegations of ill-treatment on a sheet which is given to the police for their guidance and which then becomes part of the Prisoner Arrest Form. In addition, however, the medical officer will also take notes about the prisoner's medical history and more detailed notes of his clinical findings if these are significant. These include an anatomical diagram showing any external bruises, abrasions or lacerations. These more comprehensive records form a Prisoner Medical Record which remains under the control of the medical officer. The arrangement now reached is that medical records are disclosed to the police only insofar as they relate to allegations of ill-treatment or where clinical findings may alter the circumstances under which the prisoner is detained. The medical officer may thus draw on his own, retained, notes so far as findings relevant to ill-treatment are concerned in a report to the Complaints and Discipline Branch of the R.U.C. if the prisoner has made or subsequently makes a complaint of ill-treatment. There is no routine system in operation for the communication of full medical findings to the prisoner's own medical practitioner, to other doctors carrying out examinations on behalf of the police or, for example, to the medical officer at Crumlin Road Prison if the prisoner is eventually remanded in custody there. Some medical officers have sent reports on matters affecting prisoners' treatment in custody to the Chief Medical Officer at the Department of Health and Social Services and to the Police Authority in cases which have caused them concern. It is required by the terms of service set for the two Senior Medical Officers by the Police Authority that they will notify the Authority of any breach of standards in the handling of prisoners; but sending medical reports to the Authority is not a routine procedure.

Consent to medical examinations

145. As a matter of law, a medical examination by a medical officer acting for the police cannot be conducted without the prisoner's consent. Consent may be expressed or implied but, in the circumstances of police custody, the question of implied consent only arises where the prisoner is unconscious or insensible (for example, through drink). In the case of terrorist-type prisoners, the R.U.C. Code provides (rightly, in our view) that when a medical examination is contemplated, the prisoner should be introduced to the medical

officer by a uniformed police officer and that it should be the medical officer, and not the police, who should seek the consent of the prisoner. When a prisoner consents, he signs a form accordingly and the examination proceeds. When he refuses, this also is noted and witnessed.

Other duties of medical officers

146. The medical officer is also available to examine and give medical help to any police officer who requires his services. As noted in paragraph 132 above, a police officer is required by the R.U.C. Code to undergo medical examination if he alleges an assault by a prisoner. The medical officer, at least where he is full-time, also has a range of miscellaneous functions such as the medical supervision of hygiene and diet.

Medical examinations on the prisoner's own behalf

147. So far in this chapter, we have confined our consideration to medical examinations arranged by the police, whether in pursuance of the R.U.C. Code or at the request of the prisoner, and conducted by medical officers paid by the Police Authority. Arrangements may also be made, however, and quite frequently are, for a prisoner whilst in custody to receive a medical examination by a doctor engaged on the prisoner's own behalf. This may be either at his own request (in which case the R.U.C. Code states that the request must be granted) or at the request of a near relative or of a solicitor acting for the prisoner (in which case the Code leaves the officer in charge a discretion as to whether the request should be met, having regard to, amongst other things, the views of the prisoner himself and whether the request appears to be calculated to disrupt the course of interviews). The choice of doctor is not an entirely free one, for the Code provides that the examination must be conducted by the prisoner's own medical practitioner or his partner; we discuss the operation of this provision in Chapter 13.

148. The timing of a private medical examination falls to be decided by the uniformed police officer in charge of prisoners after consultation with the senior C.I.D. officer in the case and with the medical officer. Whilst in theory this might seem to offer possibilities for undue delay, no evidence of this has been placed before us. The police require that a private medical examination should be conducted in the presence of the medical officer or, if exceptionally he is not available, of a police officer. They further require that the examination should be restricted to medical matters, and that the prisoner's own doctor should be so informed by the uniformed police before the examination is begun.

149. We have been told that, although the medical officer and the doctor visiting on the prisoner's behalf may disagree about his fitness to undergo further interviews for a while, or about other matters which are subjective in character, they very rarely disagree about actual clinical findings. Both doctors can, of course, note for their own purposes any area of disagreement

which may appear to exist between them. Thus, although the two doctors do not draw up a joint report (as is the case, for example, in some insurance work), no adverse consequences appear to follow from this.

Conclusion

150. In Chapter 13 of this report, we make an assessment of and recommendations on the system described in this chapter.

PART III

INTERROGATION: ASSESSMENT
AND RECOMMENDATIONS

CHAPTER 8

THE NEED FOR IMPROVEMENT

151. As stated in the Introduction to this report, we have confined our own specific enquiries very largely to events in 1977 and 1978. This is, however, the first review of police interrogation procedures in Northern Ireland to have been conducted at least since the Compton¹⁶ and Parker¹⁷ reports and so, in assessing current procedures and practice, we have also felt it necessary to pay some regard to difficulties experienced in earlier years of the decade.

Judgment of the European Court of Human Rights

152. The ill-treatment of prisoners in Northern Ireland was an issue in the case brought in 1971 against the United Kingdom by the Government of the Irish Republic under the provisions of the European Convention on Human Rights. Altogether the applicant government submitted to the European Commission of Human Rights written evidence in relation to 228 cases, 154 of which were said to involve interrogation and were alleged to have occurred between 9 August 1971 and the end of January 1974. The European Commission of Human Rights did not examine all these cases in detail or reach opinions about them. Instead, the Commission investigated an illustrative sample of the cases, in 11 of which they drew a conclusion adverse to the United Kingdom¹⁸.

153. Following reference of the case to the European Court of Human Rights, the final judgment of the Court¹⁹ on this part of the case was that there had been a practice of inhuman and degrading treatment in August and October 1971 in relation to the use of "five techniques" in aid of interrogation at an unknown interrogation centre, and that a practice of inhuman treatment existed at Palace Barracks, Holywood, in the autumn of 1971 in connection with the interrogation of prisoners by the R.U.C. As to the five techniques, it was not alleged either to the Commission or to the Court that these were continued in use after October 1971, and the Attorney General gave to the Court an unqualified undertaking that they would not be reintroduced as an aid to interrogation. As to the other forms of ill-treatment alleged, the Court, like the Commission, drew no conclusion in respect of events after

¹⁶ *Report of the enquiry into allegations against the security forces of physical brutality in Northern Ireland arising out of events on the 9 August, 1971*, Cmnd. 4823, November 1971.

¹⁷ *Report of the Committee of Privy Counsellors appointed to consider authorised procedures for the interrogation of persons suspected of terrorism*, Cmnd. 4901, March 1972.

¹⁸ *Application No. 5310/71: Ireland against the United Kingdom of Great Britain and Northern Ireland*, Report of the European Commission of Human Rights, adopted on 25 January 1976.

¹⁹ *Case of Ireland against the United Kingdom*, Judgment of the European Court of Human Rights, delivered on 18 January 1978.

1971 except to observe that the preventive measures taken by the United Kingdom at first sight rendered hardly plausible the suggestion of the continuation or commencement of a practice or practices in breach of Article 3 of the European Convention.

154. Certain recent and current allegations of ill-treatment in Northern Ireland imply some resemblance to certain of the five techniques—for example, complaints by prisoners that they have had bags put over their heads or have been forced to assume unusual postures, or have been deprived of sleep. No-one has suggested to us that their use has been authorised. It would not be realistic or helpful to regard the ill-treatment found by the European Court to have occurred at Palace Barracks as long ago as 1971 as being a live practical issue. But there is no doubt that the events of 1971 have left behind a legacy of mistrust on the part of sections of the public in Northern Ireland so far as the interrogation of prisoners is concerned. They may indeed help to make credible allegations which are not in fact true; and a number of our witnesses have commented on the fact that no criminal or disciplinary proceedings appear to have been taken against the police officers responsible for the events in 1971, nor are any steps known to have been taken to remove them to other duties. (The proceedings before the European Commission and European Court were not concerned with the responsibility of individual police officers, but only with the responsibility of the United Kingdom in international law.) Many of the matters with which the European Commission found themselves concerned in relation to Palace Barracks—for example, the adequacy and effectiveness of supervision and the vigour of the system for investigating complaints—are in essence the same matters which we ourselves have to consider, albeit from a different starting point. Finally, the fact that the United Kingdom was the subject of this adverse judgment emphasises the point that the honour and good name of this country, as well as domestic law and the observance for their own sake of human rights recognised in the international instruments to which the United Kingdom is a party, require continuing vigilance in the matter of the interrogation of prisoners.

Civil proceedings

155. A number of prisoners have taken civil proceedings for damages for personal injuries (as well as in some instances for wrongful arrest and imprisonment) alleged to have been caused by assaults by members of the R.U.C. in arresting or interrogating them in connection with scheduled offences. In such cases the Chief Constable is joined as a co-defendant. Damages and costs awarded against him, or agreed to be paid by him and approved by the Police Authority, are paid by the Authority. The records of the Police Authority in September 1978 showed that 119 such claims had been made in respect of incidents alleged to have happened since 1 April 1972. 23 of those claims were settled out of court, the latest incident so dealt with having occurred in October 1974. 5 of the claims had been contested in court, 3 successfully and 2 unsuccessfully, these last arising from incidents in January and October 1974. 10 claims had not been pursued. Of the outstanding 82 claims, writs had been issued in 61 cases. The settled and decided claims all arose from incidents which occurred some long time ago. We nevertheless made some inquiry about them. There may have been reasons other than

lack of merit in the defence for the case being settled out of court, as for instance if witnesses were for any reason not available, but the inference to be drawn from these settled claims is obvious. We need only say that in some of them the allegations were of serious assault; in some the amount of damages paid was high. The comment has been made to us by witnesses that no disciplinary action is known to have been taken within the force against those officers who have been found at fault in civil proceedings.

Criminal proceedings

156. We sought information about the number of statements by prisoners obtained for the purpose of criminal proceedings which had been ruled inadmissible. From the records kept by the Director of Public Prosecutions for the period 1 July 1976 to 1 July 1978, 2,293 persons appeared at the Belfast City Commission charged with scheduled offences. Statements made by 15 of those persons were ruled inadmissible (2 of them in the same case). Some, but not all, of these were ruled inadmissible because they had been obtained as a result of ill-treatment of prisoners. In the same period, the Director of Public Prosecutions declined to prosecute in 7 cases (involving 11 persons) on the basis that he was not satisfied by the prosecution proofs in relation to section 6 of the Act of 1973.

157. We have also enquired into the position with regard to the prosecution of police officers for alleged offences against prisoners in custody or in the course of interrogation. Between 1972 and the end of 1978, arising from 8 separate incidents, 19 officers were prosecuted (one of them twice). Of these 16 were found not guilty at first instance; in one case a plea of *nolle prosequi* was entered; in the remaining 2 cases the officers were convicted at first instance but their convictions were set aside on appeal. In 5 of the instances where officers were acquitted, damages were paid in civil claims brought by the victims in respect of the same incidents. At the end of 1978, criminal proceedings had been commenced but not yet concluded against 3 further officers, arising from one incident.

Recent and current complaints

158. One constant feature of the scene in recent years has been the large volume of complaints from prisoners about their treatment by C.I.D. officers during interrogation. We deal with the question of complaints in Parts IV and V of this report. These complaints are widely publicised and form the basis for an effective campaign of publicity and propaganda, well financed, throughout the world by Republican organisations. It is to be noted, however, that the complaints do not come only from Republican prisoners. It must also be noted that expressions of concern, based on acceptance of these complaints as at least to some extent justified, have come from some prominent public figures who cannot be accused of political motives or conscious bias or prejudice. We have borne in mind that prisoners on release or who have to serve a sentence in prison may have very good reasons for their own safety and reputation with their comrades to invent false allegations of ill-treatment. In addition, there is good reason to believe that prisoners are instructed by their political bosses to make complaints and how to do so, for we have been shown what appear to be written training instructions to that effect.

The police allege many instances where marks, bruises and even wounds have been painfully self-inflicted to support false allegations made for one reason or another. There must also be taken into account the possibility that prisoners, when being transported in a van together (prior to the introduction of cellular vehicles), may have harmed each other either in fighting or in deliberate furtherance of a complaint against the police. With such motives in existence, clearly great caution is called for in dealing with a prisoner's complaints, if unsupported by other evidence. Unhappily, in some instances, there is such evidence.

Medical evidence

159. The forensic medical officers, early in 1977, examining prisoners at the stage when they were being charged at police stations throughout the Province, noted in some police stations and police offices a large increase of significant bruising, contusions and abrasions of the body and of evidence of hyper-extension and hyper-flexion of joints (especially of the wrist), of tenderness associated with hair-pulling and persistent jabbing, of rupture of the eardrums and of increased mental agitation and excessive anxiety states. These officers, in the light of their own experience, were well aware of the need for caution in dealing with prisoners' complaints, and of the possibilities of exaggeration, invention, and self-inflicted injury. Before this time, the principal complaints made by prisoners had been only of lack of sleep and the excessive length of interviews. The new findings caused so much concern that, after some oral communications, in April 1977 a first letter was written to the Police Authority on behalf of the Association of Forensic Medical Officers bringing the position to the notice of the Authority. The Association made repeated representations in the summer and autumn of 1977 both to the Authority, to senior police officers and to other persons in positions of authority. Particular concern was expressed about the condition of prisoners who had passed through Castlereagh. At one stage, when denials of ill-treatment of prisoners were made by the police, some of the medical officers who had examined prisoners, and found injuries, had reason to fear for their reputation. There is some difference of record and recollection as to the sequence of events and what happened thereafter, but certainly senior police officers and eventually the Chief Constable were made aware of the Police Authority's and doctors' concern, and meetings took place between representatives of the doctors and the Chief Constable. A small committee chaired by the Deputy Chief Constable (Operations), with doctor and police members, was set up to improve communications between them. Ultimately, it was arranged that the doctors' representatives should have direct access to the Chief Constable or his deputies if they wished to bring a particular case to their notice. Certain changes in procedures and personnel then took place, and the medical officers were satisfied that the situation had improved. In early 1978, concern arose again—particularly, for a short period, over the treatment and condition of prisoners at Gough—and strong representations were made by the doctors acting there to the Police Authority. As a result some changes were made in the personnel there, which brought about a situation satisfactory to the doctors.

Evidence from Amnesty International

160. When, in November 1977, the Amnesty International mission visited Northern Ireland some of the doctors expressed the view to the mission that the supervision and treatment of prisoners had improved to the point at which there was no need for continuing apprehension. Amnesty International conducted its own investigation, receiving direct testimony from 52 persons who alleged ill-treatment in police custody; in 13 of these cases medical reports from the complainant's own doctor were also available and the mission examined 5 of the complainants personally, but these examinations mostly took place a considerable time after the alleged events. In addition the mission examined medical reports concerning 26 other cases of alleged ill-treatment. It should be stressed that the persons and material examined were not a random sample but were arranged by the complainants' lawyers or relatives or by interested organisations. Some of the cases reported by the mission show clear evidence of false allegations; for example, case No. 67 alleged that he "had teeth knocked out", but examination showed no evidence of dental damage. In other cases, there was *prima facie* evidence that ill-treatment had taken place.

Sources of medical evidence available to the Inquiry

161. In our inquiry we were able to obtain medical evidence from four independent sources: the medical officers who are employed full-time at the police offices and their deputies; members of the Association of Forensic Medical Officers who examine prisoners charged at police stations; prison medical officers who examine prisoners remanded in custody; and family doctors called at the request of the prisoners or their relatives to examine prisoners detained in a police station or police office. We have been fortunate in some instances in having reports on the same prisoner from the medical officers at a police office, the police station at which he was subsequently charged and the prison to which he was remanded, thus providing a composite picture of his medical history.

162. As noted in the previous chapter of this report, the medical officers at the police offices complete two records for each prisoner. The first is a brief report for the police, indicating the general state of the prisoner's health, whether any special precautions should be observed during interrogation, and whether he requires any medical treatment during the period of detention. The second report is a detailed clinical record of the state of the prisoner's health and includes large anatomical diagrams on which any marks, abrasions, lacerations or bruises can be marked. This record is confidential to the medical officer and his deputies and is not part of the police file. We were permitted to examine the latter type of record in 105 cases in which complaints of ill-treatment had been made during 1978. We also examined detailed clinical records made by members of the Association of Forensic Medical Officers in 23 cases at the time when the prisoners were charged. We further examined a tabulation of 52 cases of prisoners examined medically when remanded in custody. Finally we saw 28 independent reports by one family doctor who had been called to examine prisoners, and a number of reports by other family doctors which had been lodged in the medical officers' confidential files. The medical evidence available to us was therefore detailed, extensive and from independent sources.

The nature of the medical evidence

163. Five categories can be recognised on the basis of this medical evidence. The first and largest is of those prisoners who complained of ill-treatment which was unlikely to leave physical evidence, and in whose cases medical examination was negative. The second comprises cases in which complaints of physical ill-treatment during interrogation were clearly fabricated because, had the prisoner been abused in the manner alleged, marks would certainly have been present, yet none were found on medical examination either at the police office or subsequently in those cases in which the prisoner was charged or remanded in custody. The third consists of a group in which injuries were undoubtedly self-inflicted. Examples of these were linear cuts across the front of the wrist inflicted by a plastic knife. The fourth category contains those who complained of physical ill-treatment and showed marks which could have been inflicted by others yet could have been self-inflicted. In some of these instances detailed attention to the precise situation, dimensions and other clinical features of the marks led experienced forensic medical officers to the conclusion that they were not self-inflicted. The fifth and most important group from the standpoint of the present inquiry is that in which the evidence indicates that the injuries sustained during the period of detention in the police office were inflicted by someone other than the prisoner himself. This is indicated beyond all doubt by the nature, severity, sites and numbers of separate injuries in one person. An example would be haemorrhage into the eye, a swollen nose, a cut lip and multiple bruises on various parts of the body, all in one prisoner. We wish to point to and emphasize our use above of the word "indicates", and to make it clear that we are well aware that, in most of these instances, the complaints of the prisoner and the reports by the doctors of their findings and conclusions have not been tested and elucidated by critical cross-examination. We also wish to make it clear that we have not heard any evidence from either the officers who interrogated these prisoners or those who were responsible for their custody. We have it well in mind that circumstances may arise in which prisoners may lawfully have to be physically restrained or in which officers may have to defend themselves. (In these instances, of course, the officers should make a report of the incident.) We are not to be taken as condemning these officers unheard. There can, however, whatever the precise explanation, be no doubt that the injuries in this last class of cases were not self-inflicted and were sustained during the period of detention at a police office.

164. What we have found reinforces the concern shown by the doctors and the Police Authority, and demonstrates the need for an improvement in the supervision and control of interrogation. Moreover, we cannot blind ourselves to the possibility that if, as we have found on the basis of medical evidence, ill-treatment causing injury could occur, so could ill-treatment which leaves no marks. We hasten to add that the evidence we have confirms one point made in the Amnesty International report, namely that no complaint of ill-treatment is made against uniformed officers. Further, the evidence we have seen and heard confirms that prisoners do invent allegations and exaggerate trivialities for their own ends and purposes, as we have already mentioned. But what is to be aimed at is a system in which a prisoner who walks into a police office unhurt and unmarked shall be unhurt and unmarked when

he leaves that office. A system which, so far as possible, will protect prisoners against ill-treatment, will also protect police officers against false allegations of ill-treatment. It is with these matters in mind that we have proceeded to our assessment of the present procedures and practices and to make recommendations.

CHAPTER 9

THE DECISION TO ARREST AND THE LOCATION FOR INTERROGATION

Numbers of arrests

165. The criticism is frequently made that too many suspects are arrested without there being good reason for doing so. This criticism is supported by reference to the high proportion of those arrested under the provisions of the Northern Ireland (Emergency Provisions) Acts and the Prevention of Terrorism (Temporary Provisions) Act 1976 who are ultimately released without being charged with any offence. Appendix 1 shows that, between September 1977 and August 1978, this proportion stood at approximately 65 per cent. It is alleged that in earlier years, and in particular when internment without trial was first effected, a number of people were arrested on insufficient evidence. We were moved to look into this point in relation to more recent events by three considerations. First, if the information on which a suspect is arrested is skimpy, this may have an effect on the nature and conduct of the interrogation, for frustration on both sides of the table may lead to anger and possibly to violence. Second, too many arrests and interrogations in any one period may overwhelm the available accommodation and the staff both of interrogating officers and uniformed officers. Work may therefore be done over-hastily and impatiently, when time and patience are essential to the careful treatment of prisoners and the proper conduct of an interrogation. Third, if persons are wrongly arrested, this has a profound effect in the community from which they come. As one officer said to us:

"... if we get the wrong man, we soon get to know about it by the reaction of the people in the district ..."

The decision to arrest

166. We therefore looked at the system for the collection and collation of intelligence, which leads to the decision as to whom to arrest and when, and which supplies the material for the brief to the interrogating officer on which he bases his questions. We also considered the level at which the decision to arrest is made. For this purpose arrests may be divided into three categories. First there are arrests made during the commission of the crime or shortly thereafter, at the scene of the crime or nearby, by an officer whose observations or immediate suspicions are the main basis for his actions. Second, there are the arrests as the opportunity arises of "wanted" persons whose description has been circulated to all officers; and third, there are the planned arrests of a person or group of persons whose criminal activities, history and whereabouts are known or believed to be known. Clearly, intelligence is the basis for the arrest in the second and third categories. The detail and substance of what we were told about these matters cannot, for obvious reasons, be disclosed. Suffice it to say that we are satisfied that there is now in existence a thorough and extensive system of collection and collation of intelligence from all sources which provides the basis for the decisions as to whom to arrest and when. Naturally, as in any human activity, mistakes and errors of judgement can occur. Again, there are clearly many instances where the

interrogation is not successful in the sense that evidence sufficient to justify the prisoner being charged with an offence is not obtained. This is a field in which there is scope for much difference of opinion as to the wisdom of an arrest in any particular case, even with the benefit of hindsight. We are satisfied, however, that there is now little danger of arrests being made on a merely speculative basis. We are further satisfied that decisions as to arrests for the more serious offences are taken at an appropriate level by officers who, by reason of their rank and position in the force, have access to the full results of the collection and collation of intelligence. As to the policy with regard to the numbers arrested at any one time, there are, obviously, instances where a gang of criminals engaged together in one or more offences must of necessity be arrested at the same time or within a short space of time, so as to avoid the chance of warning and escape. These instances apart, **we simply point to the desirability of ensuring that the numbers taken into custody by planned arrest are not too great for the available resources of accommodation and staff**, so as to ensure the effective control and supervision of detention and interrogation.

Place of interrogation

167. It has been impressed on us by a number of witnesses that the reputation of the police offices in general and Castlereagh in particular is now such, whether justifiably or not, that, in the interests of police and public relations, policies should be changed so that local police stations would be used for the interrogation of prisoners, and the concentration of prisoners for interrogation at the police offices would be discontinued. More cogently, in our opinion, the view has been expressed to us that if local crime were dealt with locally by officers known locally, it is less likely that there would be so much disquiet about the treatment of prisoners as there is now, when a prisoner may be taken a long way from his home to be dealt with by a corps of professional interrogators. The figures supplied to us of the numbers of prisoners dealt with at each police station, which are summarised in Appendix I, show that the majority of prisoners, especially those kept in custody for several days, are dealt with at the police offices, but substantial numbers are kept in custody in local police stations. A large number of terrorist suspects are kept, in particular, at Strand Road, Londonderry.

168. As we have already noted in Chapter 1, we have visited the police offices and a few police stations, and our impressions of the physical conditions there appear in Chapter 4. As we there noted, the physical conditions for prisoners and staff at the police offices and at Strand Road, Londonderry and Omagh, are better than elsewhere. In some other stations, where the need for accommodation of more than one or two prisoners overnight was not foreseen by the Victorian designers, the condition of the cells is such that it would not be right to detain prisoners there for any longer than is strictly necessary. Their size is so limited that not more than two or three could be separately accommodated in secure cells, and there are no suitable interview rooms. Moreover, in some stations there is no simple way in which the conduct of interrogations can be supervised because the design of the building does not allow supervising officers to remain near the interview

rooms. There would be considerable practical difficulties in the present situation in bringing the accommodation up to acceptable standards for keeping prisoners in custody for a period of a few days, and to provide enough accommodation for the numbers likely to be detained.

169. It is also clear that so far as the availability of doctors is concerned, there are conflicting considerations for, whereas medical officers are either on duty or immediately available at the police offices and larger police stations, the prisoner's own doctor, on the other hand, may have a long distance to travel to reach a police office (we refer again to this problem in Chapter 13). As for the convenience of the police, whereas the use of police offices with their concentration of staff and facilities has obvious advantages, there are no doubt some disadvantages to the police in their use, in that divisional C.I.D. officers concerned in interrogation may have to spend long periods away from their divisions. We have come to the conclusion that whatever advantages may be claimed for dealing with local crime locally, and for doing away with the use of the police offices, it is simply not practical to do so, having regard to the numbers of prisoners in Northern Ireland at the moment having to be dealt with. In any event the solutions to the problems we are concerned with lie not in interrogating prisoners in one place rather than another, but in controlling and supervising the process of interrogation generally. This seems likely to be easier if interrogations are carried out in a few places with proper accommodation, and provision, rather than in many places without these advantages.

170. So long, however, as the smaller local police stations are used for keeping prisoners for longer than overnight, we think it desirable that further attention be given to the standard of accommodation there. **We therefore recommend that all cell accommodation in police stations be reviewed, with the object of specifying which stations may not be, and which may be used for keeping prisoners in custody for interrogation.** We also think that, both at the police offices and police stations used for interrogation, further attention should be given to the planning and position of the rooms of the senior officers, both C.I.D. and uniformed, whose duty it is respectively to supervise the conduct of interrogation and to oversee the welfare of the prisoners. Whilst we recognise that some of the accommodation has had to be adapted from other uses as at Strand Road, Londonderry and that other accommodation (as at Castlereagh) is partly of a prefabricated nature and is in some respects cramped, **we recommend that the siting of the accommodation for the supervising officers be reviewed with the object of placing it in the position best suited to exercising supervision.** We have further proposals to make in Chapter 12 which are concerned with dealing with the same problem.

CHAPTER 10

THE CONDUCT OF INTERROGATION

Experience of interviewing officers

171. In England and Wales the investigation of the most serious crimes, and in particular the interviewing of those suspected of such crimes, are carried out by detective officers of senior rank. In Northern Ireland, however, as we have noted in Chapter 4, the interviewing of such prisoners is frequently entrusted to detective officers of junior rank. At an early stage in our inquiry, we also gained the impression that a considerable number of these officers had very short service either as detectives or in the force generally. We were concerned about this because, whilst we accept that young officers may possibly establish rapport with young prisoners (as most of them are) more easily than would older officers, it seemed to us that some of the complaints made about the conduct of interviews might arise from youth or inexperience on the part of the interviewers.

172. We therefore requested details of the age and length of service in the force of the officers in each division and regional crime squad regularly engaged in interviewing. These figures showed, for example, that of the 309 interviewers of detective constable rank almost two thirds—192—had less than 10 years' total service, and 39 had less than 5 years' total service. Having regard however to the age structure in the police service in the United Kingdom generally, and in particular to the great expansion in the strength of the R.U.C. in recent years, these figures are not particularly surprising. As to the rank of the officers engaged in interviewing, we accept that the great number of serious crimes such as murder, attempted murder and explosives offences committed in Northern Ireland in recent years makes it inevitable that junior officers are employed in this kind of work. We are therefore unable to make any recommendations for the immediate future as regards the rank or experience of interviewing officers; but **we express the hope that, as the expansion of the R.U.C. stabilises and the number of serious crimes diminishes, more senior and more experienced officers will be able to play a greater part in the interviewing of prisoners.**

Training

173. Our consideration of the matters dealt with above led us on to the general subject of the recruitment and training of detective officers. We accept that the detective branch of the service has had considerable success in recent years in the detection of crime, demonstrated by the figures of convictions, which must in turn have been a major factor in the reduction of serious crimes committed in the last two years. We also accept that because of the great amount of work to be done, young officers quickly gain considerable experience, especially in interrogation. Up to now they have, as we have noted in Chapter 4, received little formal training. They have gained their knowledge of how to do their work, and the methods to be used, by accompanying more experienced officers. Indeed, it has been said to us that interrogation cannot be taught but can only be learnt by experience, and then only by those who have a talent for it.

174. We accept that interviewing is an art in which success is closely bound up with the temperament and personality of the interviewer. A successful practitioner must have a wide and varied experience as a basis for confidence. Without self-confidence he would soon lose control of the interview. He also requires the special, and not always compatible, qualities of patience, a flair for and command of detail, and enthusiasm. But, however talented he may be in these respects, much depends on the degree of skill acquired by the interviewer, in particular in gaining the co-operation of the person being interviewed, whether suspect or witness. Success is particularly difficult to achieve when a suspect adopts attitudes of sullen evasion, deceit, deliberate lying and even aggression, or, most difficult of all, total lack of response. Generally speaking in the investigation of serious crime in the world at large, an interview with a suspect is usually the culmination of extensive enquiries. It may either connect the suspect with the crime or possibly demonstrate his innocence. The officers selected for this task are normally well experienced, have been involved in earlier investigations and are well briefed about the activities and personality of the suspect. For reasons which we have set out in Chapter 2, in Northern Ireland the officer detailed to interview a suspect may not have all these advantages. He may not have had long experience, or any part in the earlier investigation, and may be called on to master a brief as the sole basis for the interview. At the same time he faces all the special difficulties and pitfalls of dealing with organized crime, with a criminal both trained for the crime and instructed in the attitude to adopt when being interviewed, and always the likelihood of serious allegations of misconduct being made against him subsequently.

175. It is surprising but a fact that, not only in Northern Ireland but in the police service generally, very few officers have had what might be termed formal training in the art of interviewing, particularly of suspect criminals; most of them, as in Northern Ireland, have gained their knowledge and experience by accompanying more senior officers engaged in these duties. It is therefore not surprising that most police officers believe that this is the only way to become a skilful interviewer and frown on the suggestion of formal training. We have come to the view, however, that the difficulties and complexities of the task facing young detectives in Northern Ireland are such that it is no longer wise to rely solely upon "on the job" training. We are aware that in other fields of activity it has been said that particular subjects cannot be taught. An example of this would be the art of cross-examination in legal proceedings. We accept that only practical experience of doing the work will perfect and refine the skill, but there are surely basic principles which must first be learned. We suggest that the techniques of successful interviewing can be analysed, and that experience can distill the essence of avoidable error, as well of the required skills, and demonstrate both. In other fields of police activity training methods have reached a high degree of sophistication, and it should not be difficult to devise a suitable training syllabus for the conduct of interrogation including case studies, role-playing and other simulation of practical difficulties. One of the essential features of any such training scheme would be to inculcate a knowledge of what is permissible and what is not in the treatment of suspects being interviewed (we have more to say on this subject below). So trained, we think that the beginner would be more confident and more skilful. We have borne in mind what has been said to us by some

of our witnesses, which is supported by the experience of one of our members, that the more skilled an interrogator is, the less likely he is to be driven by lack of success, frustration and impatience to resort to improper methods. **We therefore recommend the institution of a training programme on the lines set out above, to be taken at an early stage in the training of detective officers.**

Rotation of duties

176. We have also looked at the other side of the coin, for we have come to the view that there are obvious dangers in officers concentrating on interrogation duties for too long a continuous period of service. There is, in Northern Ireland, a relatively small number of officers who are engaged almost entirely on interrogation. Their concentrated experience has no doubt made them highly skilled, but it is mentally arduous work requiring considerable mental stamina, great attention to detail, great care in the framing of questions and great patience and forbearance. **We recommend generally that, as and when conditions permit, officers be re-deployed in more general detective duties for periods of time, as a matter of routine.**

Women detective officers

177. We have noted in Chapter 6 that there is no provision in the R.U.C. Code requiring a woman officer to be present when a woman suspect is being interviewed, and we have found that it is common practice for women suspects to be interviewed by male officers only (usually, of course, by two at any one time). We have also noted that there are fairly frequent complaints of sexual insults and threats of sexual assault arising from the interrogation of women suspects. Such allegations are easy to make, but they are as difficult to counter as they are to substantiate. **We recommend that steps be taken to increase the number of women detective officers engaged in interrogation, and to provide that a female suspect should not be interviewed except in the presence of a woman officer.** This is common practice elsewhere, and should help to stem the flow of these allegations.

The need for a code of conduct for interrogation

178. We have suggested in paragraph 175 that one of the essential features of a training scheme would be to inculcate a knowledge of what is permissible and what is not in the treatment of prisoners being interrogated. We have noted in Chapter 6 that there is no code of conduct, either in the R.U.C. Code or elsewhere, applying specifically to interviewing officers and the conduct of interviews: and we have suggested in Chapter 5 that it is difficult to extract from decisions of the courts guidance as to what will be acceptable and what will not, except in extreme cases. That officers do take notice of their orders or lack of them, and of the attitude of the courts, is illustrated by a newspaper report dated 27 October 1978 of an officer giving evidence in a civil claim against the police for assault and ill-treatment during interrogation. The report reads thus:

"He (the officer) admitted that if his obtaining an admission involved interviewing hours on end with no sleep they would go on with it. 'I've done it on numerous occasions. It has come before the court and has been accepted. I continue to do it', he said.

Defence counsel asked if it was part of the system of interview to deprive a prisoner of sleep. The detective replied it was his 'tactic' to interview for as long as possible."

The facts alleged in this case were that the prisoner had been interviewed on repeated occasions during a period lasting some 21 hours, after which he was allowed 2½ hours' sleep. At one stage the prisoner slashed his wrist with a plastic knife in an attempt to end the interview. At another stage, it was alleged, he had become excited, leapt from his chair and butted his head against a radiator, causing injury to his forehead. His allegations of assault against the police were not accepted by the court in the civil claim. He made no admission of crime and the criminal charges against him were not proceeded with.

179. We have attempted to give due weight to the seriousness of the crimes with which such prisoners are charged and convicted (although not in the instance quoted), and to the difficulty of obtaining evidence against them; but we have come to the conclusion that there is a need for a code of conduct for interviews set out in greater detail than in the provisions which we have described in Chapter 6. We are aware of the difficulty which may be caused by hard and fast rules, for the course of interviews varies considerably, as does the temperament and behaviour of prisoners. But we cannot contemplate with approval a situation in which the zeal, and the apparently uncontrolled discretion, of an individual officer can lead a prisoner to contemplate self-destruction or to undertake self-mutilation. There must surely be doubts about the truth of any statements made in circumstances such as these.

180. The prohibition against the unlawful use of force against a prisoner is already sufficiently specific, and the exceptional circumstances in which force may be used are sufficiently defined. The prohibition of "degrading physical or mental ill-treatment" requires further detail and definition. We do not here attempt to set out a comprehensive code of conduct, but make suggestions for items to be included in it, based on the complaints most frequently made. **We recommend that the following should be specifically prohibited:**

- (i) any order or action requiring a prisoner to strip or expose himself or herself;
- (ii) any order or action requiring a prisoner to adopt or maintain any unnatural or humiliating posture;
- (iii) any order or action requiring a prisoner to carry out unnecessarily any physically exhausting or demanding action or to adopt or maintain any such stance;
- (iv) the use of obscenities, insults or insulting language about the prisoner, his family, friends or associates, his political beliefs, religion or race;
- (v) the use of threats of physical force or of such things as being abandoned in a hostile area; and
- (vi) the use of threats of sexual assault or misbehaviour.

181. Having regard to the frequent allegations and some admissions made about the number and length of interviews which prisoners have undergone,

we have come to the conclusion that more regulation is required than the present rule that interviews should normally take place between 8.00 a.m. and midnight. **We recommend as follows:**

- (i) no single interview should go on longer than the period between normal meal-times, and interviews should not continue during meal-times;
- (ii) an interview should not commence or continue after midnight, except where operational requirements (for example, an urgent need to find out where an explosive device has been placed) demand that it should;
- (iii) not more than two officers should be present at the interview of one prisoner at any one time; and
- (iv) not more than three teams of two officers should be concerned with interviewing one prisoner.

We have already made a recommendation in paragraph 177 above concerning the presence of women officers at interviews with women prisoners, and a requirement to this effect should form part of the code of conduct. We have further proposals to make in succeeding chapters about the supervision of interviews, the attendance of doctors, and access by solicitors and relatives, for which provision should be made in the code of conduct.

Identification of interviewing officers

182. In some instances when complaints are made about interviewing officers, there is difficulty in establishing which of the several officers who have been concerned in interviewing the prisoner is or are alleged to be responsible. The normal practice of officers dealing with ordinary crime is for them to begin the initial interview by introducing themselves by name. We have been told by some officers in Northern Ireland, however, that for security reasons they do not do so. Others have told us that they follow the normal practice. If there is any difficulty in this, the problem could be overcome by the provision of numbered badges which could be worn by officers, and changed from time to time. If necessary, provision for this to be done could be made in the code of conduct.

Conclusion

183. **We recommend that the provisions we have mentioned above, and such others as it may be considered advantageous to add (either when the code of conduct is drawn up or from time to time in the light of experience) should be brought together and should form a separate section of the R.U.C. Code.** One purpose is to provide guidance and standards for both trainees and the officers engaged in interviewing duties. A further purpose is to make provision for a breach of this code to constitute a disciplinary offence, for which the officer concerned can be held responsible according to the normal procedures. We have been impressed with the need for such provision to cover those kinds of conduct not already within the ambit of the criminal law or the existing provisions of the R.U.C. Code. To the problems involved in enforcing these and other provisions effectively, we turn in later chapters.

CHAPTER 11

PROPOSALS FOR INDEPENDENT SUPERVISION**Background**

184. So far in recent English and Irish history, the whole conduct of investigations of crime, including interviewing and the taking of statements, has been in the hands of the police. Except when a solicitor is allowed to accompany his client in an interview (as we have seen in Chapter 6, this does not happen in Northern Ireland in cases involving suspect terrorists), no-one outside the police service is able to be present during interrogation. The Director of Public Prosecutions for Northern Ireland, on finally receiving a prosecution file, may request that further statements be taken, but this cannot affect the conduct of a particular interview with a suspect in custody.

185. In addition to the obvious danger that the private nature of the interview process may encourage abuse, a further important consequence is that arguments about interrogation methods, except those between the prisoner himself and the police at the time when interrogation takes place, are always conducted in retrospect. No-one outside the police service is able to adjudicate on what methods should be used in the individual case, or to observe whether misconduct is or is not taking place; all they can do is argue it afterwards. Retrospective argument, as a means of getting at the truth, has obvious limitations. In Chapter 17 of this report, for example, we make the point that it is possible to expect too much from the system for investigating complaints against the police, or indeed from the system for investigating complaints against members of any other organization, since these by their nature are purely retrospective procedures.

186. In these circumstances, which of course occur in England and Wales as well as in Northern Ireland, a range of proposals has been developed either to bring independent judgement to bear on the interrogation process at the moment when it takes place or to provide a better record of interrogation so that retrospective arguments about it can be conducted on a more objective basis. We regard both these objects as amounting in effect to independent supervision, and we accordingly discuss them both in this chapter. Some of the proposals that we have taken under review have been made as part of the general debate throughout the United Kingdom about methods of investigating crime, while others have been put to us specifically in the Northern Ireland context.

Judicial involvement in pre-trial interrogation

187. The "clean sweep" approach to the problems outlined above would be to take the responsibility for interrogating suspects and recording statements away from the police and entrust it to an examining magistrate or other judicial officer, if necessary sitting in private. A large number of European countries have such an arrangement, whereby statements taken otherwise than before a judicial officer are inadmissible as evidence. This is one of the matters which, in England and Wales, falls to be considered by the Royal

Commission on Criminal Procedure; and it is outside our terms of reference. We mention it, however, because it represents in some ways the standard against which other less far-reaching proposals need to be judged.

Proposal for civilian supervisors

188. The Police Authority for Northern Ireland, in their evidence to us, have raised for consideration the possibility of having, in the main police offices at least, a civilian supervisor and supporting staff. These supervisors would be independent of the police and would be directly responsible to the Police Authority or to some other body which was itself independent of the police. The Police Authority do not pretend to have worked up this proposal in detail. In particular, it is not clear whether it is envisaged that the supervisors should be present in the interview room and play a part in the witnessing or taking of statements. The main object of the proposal, however, would be to ensure that police officers followed the rules laid down relating to the conduct of interviews and to increase public confidence in the administration of the police offices; and its essence, as we understand it, is that supervisors would be continuously on the premises when interrogation takes place. We refer later to a slight variant which would not have this feature, but for the moment it is this comparatively "full-bodied" scheme that we must consider.

189. In considering the useful proposal made by the Police Authority, we have been anxious not to give weight only to limited practical factors, but these nevertheless deserve to be mentioned. If it were envisaged that they should be present in interview rooms on a comprehensive basis, the supervisors would in effect be shadowing the C.I.D. throughout a large part of its work, and a very considerable body of supervisors would be required. It is not at all clear that, for example, the Civil Service could provide that number of willing and suitable recruits. If, on the other hand, they were outside the interview room, perhaps in fewer numbers, they would be duplicating the uniformed police staff whose job it is at present to patrol the corridor, etc. It is not obvious that they would add to the effectiveness—or, at least, the potential effectiveness—of the present procedures, or who would wish to volunteer for such a job.

190. On wider grounds also, it is difficult to envisage the relationship of the civilian supervisors to the police. They would, of course, be material witnesses in any court proceedings. But, as the law stands, they would have no operational authority: their powers would be confined to remonstrance and argument at the time, and reporting to, say, the Police Authority afterwards. Insofar as the Police Authority heeded their observations, and sought to require the police to adjust their procedures, this would involve the Police Authority in strictly operational matters from which, it is generally agreed, they are at present excluded. Moreover, although the Police Authority's supervisors would, in a sense, represent the public in the police offices, the process would presumably remain confidential between them, the police and the Police Authority except when they gave evidence in court. So far as public confidence is concerned, it has been put to us very cogently by witnesses with political experience that the Northern Ireland public does not readily distinguish between one sort of officials and another; and we accept that a body of officials

working day by day in cooperation, as the public would see them, with the police, would quickly come to be tarred with the same brush in the minds of critical members of the community.

191. It seems to us, therefore, that this proposal is too uncertain in its effects to be commended as a practical measure at present. We have come to this conclusion after some hesitation, for the proposal has strong intuitive appeal and might seem at first sight to offer a way forward towards restoring and securing public confidence in the interrogation process.

Proposal for Boards of Visitors

192. A variant of the Police Authority's proposal has been suggested to us by members of two Boards of Visitors of H.M. Prisons in Northern Ireland. Their suggestion is that the function of Boards of Visitors should be extended so that they would act in relation to police offices in the same way as they act at present in relation to prisons—that is, by making frequent although not necessarily regular visits (sometimes without prior notice), talking to prisoners and taking up with the authorities in charge any question which appears to them to affect the prisoner's welfare. Alternatively, of course, members of the Police Authority itself could be given this role. Although this suggestion has much in common with the Police Authority's proposal, it offers the further advantages that independent persons of standing in the community would be directly involved in observing police procedures, rather than through functionaries, and that the difficulties of recruitment might be somewhat less. It also acknowledges usefully that, when suspects are detained for up to three or seven days on a regular basis, police custody begins to take on some of the administrative features of imprisonment in the sense that the standard of accommodation, regular feeding, medical care, etc., assume considerable importance.

193. It is important, however, to recognize the relevant differences between detention for the purposes of interrogation and imprisonment—differences which, in our view, render the suggestion made to us less useful than might otherwise be thought. In the case of prisons, while ill-treatment is occasionally alleged, there is no process going on which is seen by members of the public to have ill-treatment in attendance as an ever-present danger. What is at issue is the general lines on which the establishment is run, and occasional visits satisfactorily explore and illustrate this. In police stations and police offices, however, the live issue does not concern general administration, but episodes of alleged ill-treatment which may be of short duration. Reassurance cannot therefore be found from occasional visits on a sample basis. We accordingly believe that it would be unwise to conclude that the institution of a Board of Visitors for police offices and police stations would have any significant effect on the conduct of interviews or would necessarily prevent misconduct from occurring or false allegations of such misconduct being made.

Wider duties for medical officers

194. We refer in Chapter 13 to a further and similar suggestion which has been made to us, namely that medical officers should assume an openly

invigilatory role in police stations and police offices. We conclude there that, once again, this would involve an undesirable confusion of roles, and one which the medical profession as a whole would not accept.

Recording of interviews

195. Even if the conduct and supervision of interrogation remain, as now, in the hands of the police, and no other person has power to influence events at the moment when they occur, it is for consideration whether a means should be found to provide a more objective record of what takes place so that enquiries conducted retrospectively, including arguments in court, can get closer to the true facts. In the debates which have taken place throughout the United Kingdom on this subject, the suggestion most widely and strongly made is that a record of interviews with suspects—either of sound, or of vision, or both—should be preserved on electronic tape.

196. Assessment of this possibility in the United Kingdom has, by now, a considerable history. In England and Wales the Criminal Law Revision Committee, in its Eleventh Report on Evidence ²⁰, considered the merits and possible demerits of tape-recording. A majority of the committee hesitated to recommend that tape-recorders should at once be brought into general use in interrogations, but recommended that an experiment should be carried out in order to establish whether the difficulties, and in particular the technical difficulties, could be overcome and whether the use of recorders made a sufficiently valuable contribution to the ascertainment of the truth concerning happenings at police stations without seriously impairing their efficiency. A minority of the committee, however, recommended that, in respect of interrogations at police stations, statutory provision should forthwith be made for the compulsory use of tape-recorders in the larger centres of population. A further committee was subsequently appointed by the Home Secretary to consider the feasibility of an experiment in the tape-recording of police interrogations in England and Wales. That committee reported in September 1976²¹. They concluded that a modest experiment, confined to occasions when statements were taken in police stations, was feasible. So far as we know, however, no official tests leading to the use of tape-recordings in court have yet been conducted in the United Kingdom. This is, we understand, a question to which the Royal Commission on Criminal Procedure is giving further attention.

197. The views which we have heard about the possible use of tape-recorders in Northern Ireland have not advanced the arguments appreciably beyond those already rehearsed by the committees in England and Wales referred to above. The first major argument for the use of tape-recordings is that they would show clearly what had been said during interrogation and in what tone of voice. Any lawyer with experience of proceedings in the criminal court will long for the day when such evidence will cut out the tedious and time-wasting trial within a trial, and reality will take the place of imperfect recollection or even invention. The second major argument, which is more immediately relevant to our own terms of reference, is that the knowledge

²⁰ Cmnd. 4991, June 1972.

²¹ Cmnd. 6630.

that a tape-recorder was running would exercise a powerful if not complete deterrent effect on police officers who might otherwise be tempted to resort to ill-treatment. The principal general arguments against the use of tape-recorders are that they would increase the reluctance of persons being interrogated to answer questions, and are not immune from interference.

198. Rather than merely add to the general views which have been expressed in the past, we have tried to determine in what ways the general arguments are affected by the special circumstances prevailing in Northern Ireland. Some of the technical difficulties do not present themselves with any force in the Province; for example, there is no difficulty of accommodating conversations which take place in the street or on the way to a police station since, in the context with which we are concerned, interrogation does not take place in such circumstances. Other technical difficulties possibly loom larger than in England and Wales: in particular, if the whole interview process and not just the taking of statements were recorded, as ideally it should be, the bulk of the records and the task of producing and editing transcripts would be immense, bearing in mind the large numbers of prisoners detained for 3- and 7-day periods.

199. As regards the general merits and demerits of tape recording, we must first observe that the particular problem with which this proposal is first and foremost designed to deal is the problem of securing a reliable record, whereas the problem with which we are most concerned is how to prevent ill-treatment. This fact throws into greater prominence the arguments considered by the Home Secretary's committee about who should be able to switch the machine on and off and what protection could be found against the "faking" of incidents by suspects. The fact that in Northern Ireland so much reliance is placed on confession increases the force of the argument that a reliable record is desirable. It also increases, however, the need to ensure that the process of interrogation is not rendered ineffective by the presence of a tape-recorder. It has been put to us that it is remarkable enough that a suspect should ever confess to a police officer whom he has met for the first time that morning, and that, whatever the police may think, it is difficult to see why the presence of a tape-recorder should make any difference to this. We have felt bound, however, to give special prominence to the peculiar features of police interrogation in Northern Ireland, to which we have referred in Chapter 2, and in particular to the fact that persons known to have given information to the police are likely, to a greater degree than elsewhere in the United Kingdom, to suffer victimisation by the paramilitary organizations as a result. This applies both to information about the suspect's own part in crime and, even more, to information about others' involvement in terrorist activity. In view of this, we believe that the fact that a permanent and reproducible record was being made, which the suspect could not later disown, would increase his reluctance to speak to a greater degree than elsewhere. It is to be emphasized also that in our view the prisoner's lawyers, at least if he were charged with an offence, would have to have the right to listen to the whole of the tape in order to decide whether any edited version was a fair one. Once a copy of the tape passed out of the hands of the police, it would be impossible to be sure into whose hands it might fall. In Northern

Ireland, a risk to lives and to security would ensue, bearing in mind that interrogation there is intended, and likely, to reveal intelligence about the activities of terrorist organisations.

200. With these difficulties particularly in mind, we have concluded that Northern Ireland is not the best place to begin a system of tape-recording, even on an experimental basis (bearing in mind that, as the Home Secretary's committee recommended, any experiment should be "for real"). We nevertheless add our voices to those who have urged that an experiment should be mounted elsewhere; the sooner the better. When that is done, we hope that the results will be made available to those responsible for police interrogation and the administration of justice in Northern Ireland, and we recommend that fresh consideration should then be given to this question.

Video-recordings

201. Video-tape equipment has been considered—for example, by the Home Secretary's committee—as a possible accompaniment to tape-recording, with the object of enabling it to be determined whether an incident which shows up in sound on the tape was "faked" or real. It is also possible, however, to envisage video-recording being used on its own. The Home Secretary's committee recommended against including video-recording in any experiment, on grounds of cost. The argument that recording increases the inhibitions of the suspect is perhaps less forceful in relation to video-recording than in relation to tape-recording, but it does not disappear entirely: the fact that a suspect adopted a cooperative attitude towards his interviewers, for example, might be apparent from a video-tape. It may be said that, in such circumstances, it would be wholly to the advantage of the police to be able to show the tape, and thus disprove any subsequent allegation of ill-treatment; but the evidence of our police witnesses, and our own impression, is that some suspects need to be allowed a certain room for manoeuvre in what story they tell afterwards if they are to be frank with the police at the time when they are interviewed. Our own approach to video-recording has been to try to ascertain what advantages it would offer by comparison with unrecorded visual observation of interviews. Our conclusion, which needs to be read in the light of the reasoning in the next chapter of this report, is that the advantages would not be worth the very considerable extra cost and complications involved.

General conclusions

202. For the reasons developed in this chapter, we believe that none of the various proposals for independent supervision should be implemented for the time being. The general point on which they all seem to us to fall is that they are half-way houses: they would confer on persons outside the police force responsibility for what the police do, but they would not confer clear powers to decide what the police **should** do, or to issue instructions accordingly. Our own view of what is necessary is that responsibility for the conduct of interviews should be firmly grasped by those who have immediate authority to require their decisions to be implemented (that is, by senior police officers themselves), and that police procedures for the supervision of interrogation should be amended as necessary in order to ensure that any ill-treatment

is detected immediately and dealt with without delay. If it were judged impossible, on this basis, to secure and maintain the good conduct of interrogation to the satisfaction of reasonable people, then it would be necessary to contemplate changes, going some way beyond the proposals made to us, either in the responsibility as a whole of the police for questioning or at least in the powers and duties of supervisory bodies. Our judgement, however, is that this point has not been reached, and that the lesser measures that we recommend—in particular, those set out in the following chapter—are the best measures at the present time.

CHAPTER 12

SUPERVISION AND CONTROL BY THE POLICE

203. In the previous chapter we have concluded that, for the time being at least, the supervision and control of interrogation should not be given to any independent body of persons, but should remain in the hands of the police themselves. In this chapter, we consider means of developing the potential of the police force in this regard so that success may be reasonably assured.

Present bases for effective supervision

204. We start by setting out our general findings, impressions and assumptions which are relevant to the supervision and control of interviews.

205. It is against detective officers of the R.U.C., and not against members of the uniformed branch, that complaints of misconduct are primarily made. Amnesty International, for example, reported that the evidence presented to their mission did not suggest that uniformed members of the R.U.C. were involved in maltreatment. Our witnesses all took a similar view. The integrity of the uniformed branch therefore seems to afford a solid foundation on which an effective system of supervision can be based.

206. No doubt part at least of the reason why allegations are not made against the uniformed branch is that they have no responsibility, and are known to have none, for the "success" of interrogation, and no active involvement in interviews. This seems to us to be a feature well worth preserving. In commenting in the previous chapter on the proposal for civilian supervisors, we have already suggested that, if they were regularly present in the interview room, they would come to be associated with allegations made by prisoners. The same is doubtless true of uniformed police officers, and this should not be allowed to happen.

207. As far as we can tell it is in interview rooms, and not elsewhere in police offices and police stations, that ill-treatment is alleged to have occurred. The procedures now laid down in the R.U.C. Code and the standing orders appear reasonably effective to ensure that prisoners do not have contact with detective officers except in interview rooms. We have further proposals to make on this matter later in this chapter.

208. Despite the "clean bill of health" given to the uniformed branch, the fact has to be faced that none of our witnesses recalled a case in which a uniformed officer had actually seen ill-treatment occurring and had taken steps (as the R.U.C. Code would require him to do) to make an immediate report of it, or had later acknowledged having witnessed ill-treatment in a statement to the Complaints and Discipline Branch of the R.U.C. The most that has happened, according to the evidence that we have heard, is that a chief inspector has opened the door of an interview room when he heard an unusual noise. It would not be right to conclude from this fact alone that supervision by uniformed officers has proved defective, but our view is that fully effective supervision demands a higher level of activity on the part of uniformed officers.

209. All our consideration and analysis suggest that what is essential is that any ill-treatment should be prevented or, if it does occur, should be detected, reported and dealt with immediately. We do not under-estimate the importance for the sake of justice of effective and impartial enquiry afterwards, or the restraining effect of the complaints procedure on police behaviour, or the vital role of medical examinations. Nor have we any doubt that, whatever measures are adopted, many complaints will continue to be made and will need to be investigated. The great prize which remains to be won, however, is that identification of a well-founded complaint should take place at the time and not months or years afterwards.

Development of supervision

210. In recent years, the Chief Constable and other senior officers of the R.U.C. have gone a very long way to improve the control and supervision of interviews. We especially commend, first, the provisions for recording the movement of prisoners and the events that befall them which, if meticulously implemented, provide a considerable safeguard; and, secondly, the appointment of chief inspectors at Castlereagh and Gough, and of inspectors throughout the Province, to control the movements of prisoners and to supervise interviews from outside the interview room. The latter, in particular, has been a forceful step in view of the understandable reaction from some C.I.D. officers that it shows a lack of trust. The position as we see it now is that supervisory measures go further in the R.U.C. than in any other police force in the United Kingdom.

211. The fact that emergency powers are in intensive use in the Province, the continuation of complaints at a high level, public unease and perhaps the comparatively junior rank of interviewing officers nevertheless make it necessary to appraise the present procedures further to see whether more improvements can and should be made.

Supervision by senior detective officers

212. It is perhaps a platitude to record that the true remedy for any breach of standards by a C.I.D. officer is self-discipline in the C.I.D. itself. We do so because it would be wrong to imply, or to infer from our recommendations, that the C.I.D. should be allowed to get away with anything that the uniformed staff allow them to do. It is not our intention that one branch of the R.U.C. should be set in opposition to another. We have made proposals in Chapter 10 which are designed to reinforce self-discipline within the C.I.D. As to supervision, we have no recommendation to make applying specifically to senior detective officers except that **they should consciously allot a part of each working day to supervision of the conduct of their subordinates as a distinct process**, and not as one which is merely incidental to their other contacts with their colleagues.

213. We have already commented, in Chapter 9, on the extent to which the architecture of police offices and police stations is favourable to patrolling, observation and listening and have recommended that the siting of the rooms used by supervisory officers, in both the C.I.D. and uniformed branch, be reviewed.

Supervision by uniformed officers

214. The most obvious reservation that one must have about patrols by uniformed inspectors is that their effectiveness depends to a very large degree on the assiduity and persistence of the individual officer. We cannot over-emphasise the importance of the strength of character and commitment to duty of uniformed staff. The duties of the uniformed inspector require him to observe the conduct of his C.I.D. colleagues; and, if he is to supervise the situation within interview rooms efficiently and effectively, they may well resent his obvious invigilatory activities.

Rank of uniformed officers

215. Despite the fact that the appointment of chief inspectors at both police offices is itself a comparatively recent innovation, we have considered whether the rank of the uniformed officer immediately in charge where prisoners are interrogated should be raised so that he would become senior in rank to any of the C.I.D. officers involved in interrogation, whether in the interview room or outside. This precise object, however, is not attainable, since the senior C.I.D. officer involved may on occasion be a superintendent or even a chief superintendent. In any event, as we have already implied, resoluteness of purpose and strength of character are in our view more important than rank. We therefore make no recommendation on this point. We do, however, consider it essential that the uniformed chief inspector or inspector should continue to have immediate access to and support from his Divisional Commander or sub-Divisional Commander.

Number of staff

216. We have also considered whether an increase in the number of staff patrolling the corridors is necessary. **We recommend that two inspectors rather than one should be on duty throughout the day at Castlereagh**, where the number of prisoners is often very considerable and the cells and interview rooms are laid out in two separate blocks. As regards other police stations (except for Gough, where the staffing is adequate) we do not have sufficient information on which to judge whether an increase is necessary, but **Divisional Commanders should be asked to review their arrangements.**

Allocation of responsibility for individual prisoners

217. At present the uniformed chief inspector or inspector has overall responsibility for the well-being of prisoners outside the interview room, and for this purpose he has the collective aid of the staff under his command; while, inside the interview room, responsibility rests with the senior interviewing officer. It is possible to envisage an alternative arrangement under which a particular member of the uniformed staff might take responsibility for each prisoner individually, and throughout his detention²². Such responsibility

²² See for example the recommendation in the Irish Republic, in the *Report of the Committee to Recommend Certain Safeguards for Persons in Custody and for Members of An Garda Síochána* (published on 13 September 1978), that each prisoner arrested under emergency legislation should have assigned to him a "custodial guardian" who should not be below the rank of inspector. The Government of the Irish Republic has announced that this proposal is considered impracticable.

would, however, have little meaning unless the designated officer accompanied the prisoner wherever he went, including the interview room. This would detract from the general position to which we have referred at the beginning of this chapter, and which we consider a useful one, that uniformed officers have no part to play in interviews, and are not therefore subject to accusations of ill-treatment in the course of them. We therefore prefer the existing arrangement whereby the senior uniformed officer on duty has responsibility for the welfare of the prisoners collectively.

Access by uniformed officers to the interview room

218. The possibility referred to in the preceding paragraph does, however, raise the question of the circumstances in which uniformed officers can and should enter the interview room, and of the means at their disposal, short of entry, for ascertaining what is going on within. As we have already made clear, it is our view that the existing position, whereby detective officers have responsibility for interviews and the uniformed staff stay outside, should basically be upheld. This is partly so that the distinction of functions between the two branches of the force may be maintained, but also because we are satisfied as a general matter that the efficiency of interviews would be impaired if persons with objects other than the promotion of dialogue between the interviewer and the suspect were present. The interviewer is not going to be helped by uniformed officers entering spasmodically, either, but to this extent we believe that efficiency must suffer as the price of reassurance.

219. **We recommend that it should be made entirely plain to the uniformed inspectors that their responsibility for the welfare of prisoners extends to periods spent in an interview room.** This should be done by means of both an amendment to the R.U.C. Code and an addition to the standing orders for Castle-reagh and Gough.

220. Satisfactory provision is already made in the R.U.C. Code, in general terms, for any officer detecting a breach of the law or of force instructions to direct the member of the force concerned to desist, but **we recommend that it should be made explicitly clear, by means of an amendment to the Code, that if necessary he should enter the interview room for this purpose and stop the interview.** This requirement should also apply to any breach of the code of conduct for interviewing officers which we have recommended in Chapter 10, and to any events within the interview room which seem to the observer to be reasonably likely to lead to a breach of the law or instructions. The part of the R.U.C. Code which lays down the duties of the supervising inspector at present puts this matter in negative form, for it is stated that "unless for good or sufficient cause the inspector need not enter the interview room while an interview is in progress". We recommend that the instructions to inspectors should be made positive in their emphasis; if errors are to be made, it is better that they should be errors of commission rather than omission. While the general understanding should be that the inspector should not enter unnecessarily, we doubt if it is necessary or desirable to emphasise this in formal instructions.

Methods of observing interviews

221. As noted in Chapter 6, the only means of visual observation into interview rooms from outside at present is through "spyholes". Bearing in mind their simplicity, these are surprisingly useful; but there are serious limitations to their effectiveness. One cannot, through the "spyholes", take in the situation within the interview room at a glance; a concentrated stare is necessary, even when the situation within presents no particular mysteries. Their use requires a conscious decision on each occasion. It is a very obvious process to persons outside the interview room, and the degree to which it is pursued therefore depends heavily on the pertinacity of the supervising officer. Observation through the "spyholes" is also apparent to some extent to persons inside the interview room, in the sense that approaching footsteps can be heard.

222. We believe that "spyholes" have a useful part to play. **We recommend that they should immediately be installed in all remaining rooms in police stations in the Province where interviews take place** and that any obvious impediment to their usefulness (for example, furniture obscuring the view) should immediately be removed.

223. We are also of the view, however, that some further, easier and more comprehensive means of visual observation is required. The choice seems to us to be between large one-way glass observation panels in doors or walls, and closed-circuit television cameras inside the room from which a picture can be relayed to some convenient point or points outside. In H.M. Government's statement of 8 June 1978, to which we have referred in Chapter 1, the Secretary of State for Northern Ireland announced that the Chief Constable of the R.U.C. was carrying forward the consideration he was already giving to the use to be made of technical aids, and particularly the practicality of introducing closed-circuit television to monitor the interrogation of suspects. We have regarded the use of closed-circuit television as being a matter obviously for consideration by this Committee; and the Chief Constable has kindly supplied us with a paper on the subject and discussed it with us.

224. In favour of one-way glass observation panels (which would replace "spyholes"), it can be said that they would be simpler and probably cheaper and would accommodate themselves well to the existing pattern of supervision by uniformed officers, which is by means of corridor patrols. They would remove some of the disadvantages of "spyholes", but they would still suffer in particular from the fact that their use would be more or less obvious. The first great advantage of closed-circuit television is that one person can watch more than one screen. The second great advantage is that someone could watch constantly. At least, it would be wise for those inside the interview room to assume that someone was doing so. On these grounds, **we recommend that closed-circuit television cameras should be installed in all interview rooms in the police offices and police stations used for the interrogation of terrorist suspects and other persons arrested for scheduled offences.**

225. A working party appointed by the Chief Constable has considered the practicality and cost of a closed-circuit television scheme on the basis

of continuous watch being kept on banks of monitoring screens by officers of the rank of inspector, and has estimated the number of inspectors at 28. (In reaching this estimate, the working party has included the task of observing prisoners; we consider this question below.) For our part, we do not consider that the officers watching at any particular time need necessarily be of the rank of inspector, although the effective use of the equipment should clearly be a factor in the reviews of staffing at inspector level which we recommend above. Nor do we believe that the monitors should be confined to an isolated room subject only to observation by a specialist. What we have in mind is that the main monitoring screens should be sited in a room used by the chief inspector or inspector for other purposes and that he should combine their use with his existing duties. Thus, when he was not on the corridor outside the interview rooms, he could watch the screens; or, when he was engaged elsewhere, he could appoint one of his staff to do so. Instant means of communication should be provided between officers watching the screens and those in the corridor. The screens should also be available to senior detective officers in charge of interviews, who should use them frequently, and who might find them useful for general observation of the progress of interviews as well as for the detection of any misconduct; and they should be used also by any visiting senior officer.

226. In addition to assisting the chief inspector or inspector in immediate charge of the place where interrogation takes place, we believe that closed-circuit television would also offer enhanced opportunities for practical supervision by the Divisional Commander or sub-Divisional Commander, who could be provided with a single screen in their own rooms and the facility to select each interview room in turn for display. Although it is not to be supposed that they could spare very much time for watching systematically, we believe that such provision would be welcomed by senior uniformed officers, who at present have a degree of responsibility for the conduct of interviews (which responsibility should in our view be re-affirmed) but who lack effective means for carrying this responsibility into effect. **We accordingly recommend that this facility should be provided to the senior uniformed officer normally working in each building or group of buildings where the interrogation of terrorist suspects takes place, up to the level of chief superintendent.** It could of course be further extended upwards to assistant chief constables and downwards to officers relieving the chief superintendent or superintendent in his absence, if desired.

227. Closed-circuit television, when used by police officers, would not break the confidentiality of what is said in the interview room. The Chief Constable's working party has rightly had regard to a number of alternative objections to its use, the burden of which is that the reluctance of the suspect to speak would nevertheless, to an unknown degree, be increased. We accept that this may be so. But it seems to us that the balance between the efficiency of the interrogation process and the prevention of misconduct is a dilemma which cannot be avoided, that in the special circumstances of Northern Ireland further measures for the surveillance of interviews are necessary, and that the objections rehearsed by the working party apply with at least equal force to any conceivable form of effective surveillance. In comparison with some

of these, our proposal is modest but, if it is implemented with a will, we believe that it will constitute a considerable deterrent to interviewing officers tempted to cross the boundary into misconduct.

Closed-circuit television: ancillary matters

228. Although there is little reason to suppose that interviews take place except in rooms specifically set aside for that purpose, the R.U.C. Code is not absolutely specific on this point. Entry by detectives to cells, and interviews therein, are specifically prohibited, but the Code does not state positively that interviews must take place in an interview room and nowhere else. **We recommend that such provision should be made in the R.U.C. Code. We also recommend that prisoners should be delivered to the interview room by uniformed officers, rather than collected by detective officers from outside their cells, and that detective officers emerging from the interview room with the prisoner (in order, for example, to take his finger-prints) should be accompanied wherever they go by a uniformed officer, and that provision should be made in the Code accordingly.**

229. We believe also that it should be made entirely clear that, except when specially authorised for maintenance purposes, etc., no officer should interfere with or prevent the effective operation of the closed-circuit television equipment, no matter for what reason or to what use the room where the equipment is installed is for the time being put. **We recommend that a provision to this effect should be inserted in the R.U.C. Code, and that any departure from it should be dealt with as a disciplinary offence.**

Observation of prisoners

230. A further reason why the Chief Constable's working party has estimated the cost of installing closed-circuit television at a very high figure is that they have understandably envisaged extension of the system to cover cells, passages, etc., principally with the object of improving the capacity of the police to detect self-infliction of injuries by prisoners. Coverage of cells, in particular, raises technical difficulties which do not apply to interview rooms. We have reservations about how far it is acceptable to scrutinise prisoners while they are at rest, but since television would be merely an effective extension of the existing arrangements we do not feel strongly about it. **We nevertheless recommend that priority should be given to the installation of closed-circuit television in interview rooms, and that the extra difficulties attending its installation in cells should not be regarded as a reason for delay in this.**

Video-recording

231. As we have already made clear in the previous chapter, we stop conclusively short of recommending video-recording. This would introduce practical difficulties of a wholly new order, which might endanger the implementation of the whole closed-circuit television scheme. Our object in this chapter has been to develop proposals for the effective supervision of interviews as they occur, and a video facility would not in our view add to their effectiveness in this regard.

Access by relatives

232. It has been proposed to us, not only that closed-circuit television should be installed, but that relatives and solicitors should have access to the screens. It seems to us that such an arrangement could not happily co-exist with the system we have in mind, whereby the monitoring screens would be installed in rooms used by police officers for other purposes, and so we cannot recommend it. We consider the more general question of access by solicitors and relatives in Chapter 14.

CHAPTER 13

MEDICAL MATTERS

233. In Chapter 7, we summarized the existing arrangements for medical examinations of prisoners in custody and related matters. In the present chapter, we set out our comments on those arrangements, consider various proposals which have been made in relation to them and make some recommendations. As in Chapter 7, we use the term "medical officers" as shorthand to describe the medical practitioners who are paid by the Police Authority to conduct medical examinations.

Standard of existing medical services

234. All the medical officers appear to us to display competence and integrity in full measure. Their examinations are carried out thoroughly and competently, and they appear to make correct interpretations of their findings and full records of their findings and interpretations. We have not been made aware of any adverse comments by or on behalf of prisoners about their skill or conduct.

Facilities for medical examinations

235. Castlereagh and Gough now have medical examination rooms which are used for no other purpose and which are properly equipped and adequate in every way. In some other police stations, the use of rooms for medical examinations is combined with their use for other purposes. **Where possible, we consider that both practical and presentational advantages are to be gained from setting aside a room for medical examinations alone.**

Organization of existing medical services

236. From the administrative point of view, the existing arrangements could be considered somewhat untidy, in that some of the medical officers are seconded to the Police Authority, some are retained by them and some merely act on an *ad hoc* basis. Some are members of the Association of Forensic Medical Officers and some are not. This disparity of organization does not, however, seem to have any adverse practical consequences so far as the prisoners are concerned, and we would not wish to complicate the task of the Police Authority, who have in the past encountered difficulty in providing the necessary coverage, by speculating on whether some other arrangement might be possible or preferable. We merely observe that there are practical advantages in employing full-time medical officers where the number of prisoners is great. On the other hand, a presentational advantage is to be gained, at police stations where the number of prisoners is not so large, if the medical officer who examines a prisoner also has, and is known to have, other medical duties in the community at large.

Sufficiency of staff

237. The Senior Medical Officer at Gough has during certain periods been under-employed there. At Castlereagh, on the other hand, it is our impression that the Senior Medical Officer has, on certain infrequent occasions, been

over-stretched by the number of prisoners requiring to be seen. If he were to report any continuing difficulty in this regard, further arrangements would need to be made to assist him. Elsewhere in the Province, provision appears to be flexible enough to meet ebbs and flows in demand. A recommendation that we make in paragraph 249 below, if implemented, will result in an expanded need for attendance by medical officers.

The role of the medical officer

238. The medical officers rightly attach importance to their independence, not only as professional men but also in the sense that they are employed by the Police Authority and not directly by the police themselves. It is perhaps too much to expect that all prisoners will regard them as independent of the police, but in drawing up our recommendations on medical matters we have been mindful of the need not to associate them more closely with the police than is necessary.

Duties

239. The employment of medical officers at Castlereagh and Gough on a full-time basis, whilst fully justifiable in terms of workload and ready availability alone, has also led to their work taking on a slightly different colour from that of their colleagues elsewhere, and has raised fresh questions concerning the extent of their role. Their situation is different from that of a doctor who is merely called to a police station to examine a prisoner in order to see if he is under the influence of alcohol or drugs or is fit to be questioned. At the police offices, besides these duties, the medical officers have a continuing responsibility for the care of the health and well-being of the prisoners. Their position in this regard may be likened to that of a prison medical officer. It has taken a long time, and a good deal of consultation between the Police Authority, the Chief Medical Officer, the Senior Medical Officers themselves and the R.U.C., for their role to be defined: the letter from the Police Authority to the Senior Medical Officers that we have seen and which sets out their responsibilities is dated 14 August 1978. It appears, for example, that the view taken initially by the police was that the duties of medical officers were essentially confined to examining prisoners when called upon by the police to do so, whereas the Senior Medical Officers took the view that their responsibilities were wider than this. As already recorded in Chapter 7, it is now agreed amongst other things that they should have access to any prisoner at all reasonable times, and that they should notify the Police Authority and the R.U.C. of any breach of standards in the handling of prisoners. Both at Castlereagh and Gough, the Senior Medical Officer occasionally tours the establishment and makes use of the "spyholes". We have no doubt that the presence of the Senior Medical Officers throughout the day has an impact which goes beyond that of medical examinations as such.

240. It is important that recognition should be given to the special responsibilities that medical officers have by virtue of their membership of the medical profession. They have drawn our attention in particular to a declaration endorsed in 1975 by the World Medical Association, and known as the Tokyo Declaration. This declaration emphasises that a doctor must have complete clinical independence in deciding upon the care of a person for whom he is medically responsible, and that he should not countenance,

condone or participate in torture or other forms of cruel, inhuman or degrading procedures. It is clearly necessary that a doctor employed in a setting where prisoners are interrogated should have the means to satisfy himself that they are not being ill-treated.

Proposal for a wider role

241. It has been suggested to us that there should be observers in police offices and police stations where prisoners are interrogated, who should not belong to the police force, and that members of the medical profession would be well qualified for this work; and that they should be given clear responsibilities in this regard. This suggestion is really a variant of the proposal made to us by the Police Authority, which we have discussed in Chapter 11 above, except that doctors would replace civilians.

242. We have the same reservations about this as we have already expressed in relation to the Police Authority's proposal, but the suggestion that doctors should act as observers also raises some additional questions. The suggestion would necessarily entail placing on full-time medical officers wider duties to oversee the interrogation process than they have at present, and in practical terms this can only mean that they should have the right to enter the interview room for reasons unconnected with immediate medical need. We do not believe that the medical profession as a whole would accept that doctors should have this degree of responsibility for non-medical matters. Moreover, it seems to us that it would be unfortunate to use medical officers in this way. Their silence would denote their consent, and of course they would have to give evidence in court about the behaviour of the police. They would thus be much more closely associated in the prisoner's mind with the C.I.D. and with police procedure than they are at present. We think it is preferable that their only direct contact with prisoners should be when acting in a strictly medical capacity and not as arbiters of non-medical procedures.

243. This is not to say that the medical officers should not be given every opportunity to satisfy themselves that the health of prisoners is not being impaired by police procedures. We see no reason, for example, why they should not have access to the closed-circuit television system which we have recommended in Chapter 12, or question the length of an interview if it appears to them on medical grounds to be excessive (without in any way assuming a general duty to monitor the length of interviews).

Operation of the existing procedures for medical examinations by medical officers

244. No-one has suggested to us that the present provisions of the R.U.C. Code, described in Chapter 7, are not observed by the police. We have ourselves come across a case, however, in which a prisoner alleged that police officers assaulted him, but they subsequently alleged that he had assaulted them, and yet in which it seems to have fallen to him rather than to them to request a medical examination. Had the present provisions of the Code been observed, the officers would themselves have asked for a medical examination to be arranged.

245. When a prisoner asks to see the medical officer, there is obviously room for judgement on the part of the police officers who are dealing with him at the time about whether to arrange this at once or, for example, to complete an interview first; and it is possible to imagine practical difficulties, especially outside Castlereagh and Gough, in securing the immediate attendance of a medical officer. We have not heard much evidence from former prisoners themselves about how this aspect of the procedures works out in practice. We have, however, asked a number of medical officers whether prisoners, on finally seeing them, have complained that their request to do so has been unreasonably refused or unduly delayed. From their answers, it appears that this procedure operates satisfactorily. It has to be conceded that, if prisoners were afforded an absolute right to see a medical officer at any precise moment of their choosing, or to be removed to a separate room to await the attention of the medical officer if he were engaged on other work, this would afford them opportunities to disrupt the course of interrogation without good cause.

Frequency of medical examinations

246. Broadly speaking, therefore, the existing provisions of the Code relating to medical officers' examinations appear to be satisfactorily followed. The remaining question is whether further provision needs to be made, and in particular whether the frequency of medical examinations should be increased. Given the most important part played by medical examinations in the determination of complaints of ill-treatment, an obvious possibility is that they should be arranged, or at least offered, at the beginning and end of each interview. This would, in general, enable any marks or injuries to be more precisely ascribed to a particular interview session, although some marks and bruises take time to mature. It would also reduce the room for manoeuvre of a prisoner making false complaints, since a complaint made at any other time than immediately following the events alleged would be scarcely credible, and any self-inflicted injuries could be detected before each interview began.

247. Having regard to our recommendations in Chapter 10 about the length of interviews, however, such a proposal might entail up to six or even more medical examinations of each prisoner in a single day; and the prisoner could end up spending more time in the medical examination room than in the interview room or even than in his cell. We have come to the conclusion that the resulting increase in the work-load of medical officers (even if there were more of them), and the strain on the administrative procedures as a whole in police offices and police stations, would be unmanageable.

248. It does appear to us, however, that part of the object of such a proposal could be achieved by a different and easier means if, immediately after each interview, the uniformed staff were to ask the prisoner whether he had any complaint to make about the conduct of the interview and whether he wished a medical officer to see him. The prisoner could be asked to reply to these questions in writing, as currently happens immediately before his final discharge or transfer from the police office or police station. **We recommend accordingly.**

249. We are also of the view that, while medical examinations after each interview would go unnecessarily far, it is highly desirable that prisoners should be seen by a medical officer more frequently than on reception and before discharge or transfer alone. Bearing in mind that a high proportion of all complaints are made to medical officers, and that there may be reasons which appear cogent to the prisoner why he should not see or complain to a medical officer immediately before discharge or transfer, there could be advantage in his seeing a doctor in the intermediate stages of detention even if neither he nor the police requested this. As we have noted in Chapter 7, the Police Authority's present terms of service of the Senior Medical Officers at Castlereagh and Gough state that prisoners will be offered medical examination during each 24 hours' period of detention. **We recommend that this should be made universal practice in relation to terrorist suspects and persons suspected of scheduled offences throughout the Province**, and that the R.U.C Code should be amended accordingly. We think that the offer of a medical examination in these circumstances should be made by a medical officer personally. While for the initial and final medical examinations now prescribed by the Code the prisoner should continue to be taken to the medical examination room, we do not think this is necessary in all cases for the further procedure that we now recommend. If the medical officer prefers to see the prisoner in his cell, and make the offer of an examination there, the prisoner could then go to the examination room if he wished to take up the offer. The times of the invitations, and the result, should be noted both by the medical officer and by the police.

Communication of medical information to the police

250. We approve the present arrangement (see Chapter 7) according to which medical officers communicate to the police only such information as is relevant to the prisoner's treatment or to allegations by him against the police, and keep their notes about other purely medical matters in their own possession. This is in keeping with good medical practice whereby private medical matters are kept confidential between doctor and patient.

Linkage of medical records

251. Some medical signs appear only some days after the events which have caused them, and their significance can be overlooked, or alternatively exaggerated, if the doctor observing them is not familiar with the medical history. We believe that it would be helpful if the findings and opinions of one medical officer were communicated, on a routine basis, to another who subsequently examines the same prisoner in another police office or station, and also to the medical officer in a prison if he finally goes there, so that each could be informed about and guided by the previous findings. **We so recommend.**

Communication with other doctors

252. Although medical officers sometimes inform a prisoner's registered general practitioner of any illness or injury requiring medical attention, this does not seem to be an invariable practice. **We recommend that this should be done in all appropriate cases.** Whether the general practitioner or the prisoner wishes to take the matter further—for example, by arranging a private medical examination—will then be up to them to decide.

Communication to the Police Authority

253. As noted in Chapter 7, medical officers have occasionally sent information, in cases where allegations of ill-treatment have been supported by clinical findings, to the Police Authority. We believe that it is right that, as employees of the Police Authority, medical officers should communicate to them any matters of concern, provided that confidential medical matters are not unnecessarily divulged.

The role of the Chief Medical Officer

254. Medical officers have also communicated, in matters which have caused them concern, with the Chief Medical Officer at the Department of Health and Social Services. As noted in Chapter 7, the Senior Medical Officers at Castlereagh and Gough have a direct relationship with him since they remain officers of that Department and he is therefore their professional head. It appears also that other medical officers, who are not members of the Department, find it helpful to consult him from time to time.

255. The possibility therefore arises that the Chief Medical Officer might, on a more formal basis than now, be a recipient of medical reports from medical officers throughout the Province and, on the basis of this information, act as a monitor of medical reports in relation to police interrogation procedures. Such a function would be separate from the procedure for investigating complaints as such. The Chief Medical Officer's attention would in a sense range more widely, since he would be looking at reports on a number of cases together and not just one at a time or with a view to affecting the decision in an individual case; and in another sense more narrowly, since he would not normally have access to information apart from medical reports. We think it is right that medical officers should continue to consult the Chief Medical Officer in his professional capacity, and that he, if he feels it right to do so, should communicate any concern that they may have, through his Department, to the Secretary of State. But we do not think it would be right to place this arrangement on a formal basis as being a means of controlling the behaviour of the R.U.C. The proper person to maintain an overview of interrogation procedures and of complaints, in our opinion, is not the Chief Medical Officer but the Chief Constable, since he alone has authority over the force in operational matters and it is his responsibility to ensure that the law and good practice are upheld.

Refusal of consent to medical examinations

256. We have referred in Chapter 7 to the fact that consent must be obtained before a medical examination is carried out. In normal medical practice, this problem is largely theoretical, but in the field with which we are concerned it has practical importance because a large number of prisoners do refuse consent to medical examinations arranged at the behest of the police. Among them are quite a large number who subsequently allege that they have been ill-treated whilst in custody, and some of whom again produce medical evidence from their own doctors to that effect. Thus, the fact that consent is refused can mean either that prisoners who have been ill-treated could leave a police station or police office with injuries that go undetected,

or that the police are taken by surprise by the report of a private medical examination, conducted after the prisoner's release, which appears to lend force to allegations of ill-treatment. Some of the cases cited in the Amnesty International report, for example, appear to be in this category.

Rate of consent

257. Obtaining the prisoner's consent to a full clinical examination is a matter in which the medical officers have taken considerable trouble. It is clearly a delicate exercise, and one which requires a departure from normal clinical practice, since a doctor is normally concerned to give his help to people who want it rather than to appear to be thrusting it upon those who do not. We have not found it necessary to investigate, in detail and across the whole Province, the proportion of cases in which the consent of prisoners to medical examinations is forthcoming. It is immediately apparent, however, that there is a very large variation between the police offices at Castlereagh and Gough respectively. There is also some variation between the proportion of prisoners consenting to an examination upon entry to police custody and the proportion consenting on release or transfer. We understand that, at Gough, 95-98 per cent of prisoners consent to examination. At Castlereagh, however, the rate of consent to clinical examination immediately after admission has remained at approximately 60 per cent. As to final examinations at Castlereagh, about one half of those being transferred to police custody elsewhere (e.g. to be charged) consent, but less than 20 per cent of those released and not transferred elsewhere.

258. We have heard a variety of suggestions about why consent is refused. A prisoner may of course feel perfectly well and in no need of medical attention, both on arrival and discharge, and when the time comes for his release he may simply want to get home as quickly as possible; but this explanation cannot be comprehensive since it does not account for those who subsequently make complaints. The most cogent explanation which does take account of this is that prisoners intending to make complaints do not want to be further detained by the police while they do so, as they have reason to believe they will be if they complain to the medical officer. In any event such prisoners may, without any reflection on the medical officer, wish to make their complaints in their own time, in more relaxed circumstances; and they may also think that their own doctor will take a more sympathetic view of such injuries or indisposition as they may present than the medical officer would. On another view, however, prisoners often have ulterior motives for refusing to be examined whilst in police custody. It is said that they may arrive with marks of injury already on their bodies which they do not want to be detected at the outset but which they hope can later be adduced as evidence of ill-treatment whilst in custody. Similarly, it is said that the interval between departure from police custody and examination by a doctor elsewhere may be used by a prisoner to inflict injuries on himself or invite other persons to do so, in order to lend colour to a complaint.

259. Various explanations have again been ventured of the high rate of refusals at Castlereagh compared with Gough. We cannot conclusively judge which of these explanations is the right one. The possibility occurs to us

that the fact that Castlereagh is used more intensively than Gough, and consequently that the medical officers there are more heavily engaged and thus have less time to persuade prisoners to undergo examination, may play some part.

Proposal for compulsory medical examinations

260. In order to ensure the availability of contemporary medical evidence, and so to make it easier for the Crown to rebut allegations of ill-treatment, a proposal has been made that legislation should be introduced to enable the police to require a prisoner detained under the emergency legislation to undergo medical examination at an appropriate stage. The proposal is not that medical examinations should be compulsory in the sense that physical force could be used in carrying them out against the wishes of the prisoner, but that certain legal consequences should follow from a refusal to be examined. In the case of criminal proceedings against a prisoner, and in relation to section 8 of the 1978 Act, it is suggested that a refusal to comply with a requirement to be medically examined should be held to negative as *prima facie* evidence of subjection to torture or inhuman or degrading treatment any medical evidence of injury recorded after release from custody. In the case of civil claims for damages or compensation in respect of injuries alleged to have been sustained at the hands of the police, it is similarly suggested that a refusal to be medically examined should reduce the weight to be attached to medical evidence of injury first recorded after release from custody.

261. We entirely agree that there can be no question of proceeding with a medical examination without the consent of the prisoner—the use of force for this purpose would be impracticable and improper—and that, if one wishes to introduce a mandatory element, this must be achieved by the use of indirect sanctions such as those suggested in the proposal made to us. In this form, however, the proposal seems to us to be without particular force. Any judge making a decision, whether in criminal or civil proceedings, about the likelihood of ill-treatment having occurred is bound to take into account any refusal by a prisoner to be medically examined whilst in custody and the consequent lack of evidence of his condition at that stage, together with any other factors that affect the case, and we have seen no evidence that prisoners benefit unduly from the absence of a specific provision to that effect. The result of legislation along the lines proposed to us, on the other hand, would be to impose a rigid rule confined to one factor only, and to restrict the judge's ability to consider the weight of the evidence generally. If there were really cogent evidence of ill-treatment having occurred whilst the prisoner was in police custody—evidence which might, for example come from a doctor in a prison after the man concerned had arrived there on remand—it would in our view be absurd to require this evidence to be wholly set aside simply because of a prior refusal, perhaps for innocent reasons, of a medical examination.

262. The only solution, therefore, that we are able to offer to the problems caused by refusal of medical examinations is that every effort should continue to be made to impress their importance on prisoners. At the moment this task largely falls on the medical officers, and rightly so; but **we also recommend**

that mention of the importance of medical examinations should be included in the individual notices of prisoners' rights which we recommend (in Chapter 14 below) should be given to each prisoner.

Medical examinations on the prisoner's own behalf

263. As we have seen in Chapter 7, there is provision for prisoners to be examined by doctors of their or their families' or representatives' own choice. The principal outstanding problem in this regard arises from the insistence of the police that only the prisoner's own medical practitioner (that is, we suppose, a doctor with whom he is registered or who has previously attended him) or the partner of that practitioner should be admitted to conduct an examination. Previously, between July 1977 and 1 June 1978, any medical practitioner chosen by the prisoner or by his family or adviser would be admitted. It is said by the police, and confirmed by medical officers, that some of the doctors thus engaged used the occasion to engage in conversations with prisoners on non-medical matters which were likely to hinder the administration of justice, or to stimulate prisoners to make complaints which were not spontaneously offered. Any doctor might, of course, behave in this way by reason of his personal sympathies, but the police put particular weight on the fact that a prisoner who has received prior advice from a paramilitary organization, or his family or advisers, is likely to turn first to a doctor who is known to be sympathetic and who will have as one of his objects, not merely professional medical services, but also general advice to the prisoner about his situation in legal terms.

Reluctance of medical practitioners to attend

264. The arrangement whereby a prisoner or his advisers could engage any doctor to undertake a medical examination, however, had the entirely proper advantage for the prisoner that he could be reasonably confident of finding a doctor able and willing to attend. Under the new system, on the other hand, great difficulty is sometimes encountered in securing the attendance of the prisoner's own practitioner or his partner. The prisoner's own doctor may himself be sick or on holiday and his partner, if he has one, left to cope with the practice alone. Even if he is available in principle, he may be given no particular reason to suppose that the prisoner is ill, has been ill-treated or really needs medical attention. He will probably be reluctant to become engaged in a medico-legal matter, having regard to the fact that an appearance in court may be required later as a result. A considerable journey may also be involved, especially when a prisoner has been removed from his home area to Castlereagh or Gough. A doctor in a busy family practice could not cope with many such calls without an adverse effect on his other patients, most of whom will be in greater need of medical attention. We have received forceful representations against the new rule imposed by the police, some of which have been most reasonably argued; and it does appear that, in some cases, the new system simply does not work in the sense that, if the prisoner may only summon the practitioner with whom he is registered or that practitioner's partner, he will not in practice secure a private medical examination at all.

265. A good part of the argument for letting a prisoner see a doctor of his own choice rests, of course, not on the proposition that this is necessary

to secure his health and well-being but on the need to re-assure anxious relatives that he is not being ill-treated in custody. This particular object is one which can be achieved, to some degree at least, by other means. It is open to family doctors, when approached by relatives, to speak on the telephone to the medical officer on the basis of professional confidence. Our impression is that medical officers not only agree to this but welcome it, and that it is almost always sufficient to set relatives' minds at rest.

266. Our general view is that the strict duty of the police does not go beyond securing the attendance of medical officers of acknowledged competence and integrity, as they already do, and we share the view of the police that it is preferable that private medical examinations should be conducted by doctors who are representative of the medical community at large rather than by "specialists". We believe, therefore, that prisoners should continue to be obliged, as a first step, to request the attendance of the practitioner with whom they are registered or that practitioner's partner. We have two suggestions to make, however, to meet the situation in which neither of these doctors is able to attend. The first suggestion is that a practice which is already in operation at Gough should be extended throughout the Province and in particular to Castlereagh, where the problems seem mostly to arise. The practice is that, if the prisoner's own doctor works a long way away from the police office, he may himself request a colleague living closer to conduct an examination on his behalf. If this step in turn is not successful (perhaps because the prisoner's own doctor is not acquainted with any professional colleagues working in, say, Belfast, or cannot find one willing to attend), our further suggestion is that the prisoner should then be invited to request an examination by one of a panel of doctors working within a convenient radius of the police office or police station, and known to be willing to undertake this work. This panel of doctors should be drawn up, if necessary with the assistance of the professional medical organizations, on a strict geographical basis and without regard to the political, religious or other affiliations of the doctors concerned. The doctors would themselves agree on which of them would be available at any particular time on a rota basis, and the prisoner would be obliged to request the services of the doctor on the rota. An arrangement of this kind is already in operation, for example, at Omagh so far as examinations under the auspices of the Police Authority are concerned, and would in our view serve just as well for private examinations. **Once such an arrangement has been set up, we recommend that the corresponding amendments should be made to the R.U.C. Code.** Payment of the doctor thus engaged would continue to be the responsibility of the prisoner or his family or advisers.

267. When a private medical examination is carried out, we agree with the police that this should be strictly confined to medical matters. We also agree that it is entirely in keeping with good medical practice that the medical officer should be present during the examination, since he has the primary responsibility for the medical care of the prisoner for the time being. This seems to be much more common than merely having a police officer present, and we think this is rightly so.

CHAPTER 14

ACCESS BY SOLICITORS AND RELATIVES

268. We have referred in Chapter 5 to the introduction of the Judges' Rules in their 1964 version in Northern Ireland, and to the principle set out in the preamble to those Rules of the right of access to a solicitor, subject to the exceptions set out in the proviso²³. We have also referred in Chapter 6 to the provisions of the R.U.C. Code on the same subject. As we have already noted, whether the request is made by the prisoner, or by his solicitor or by others on his behalf, in practice solicitors are not admitted to see prisoners arrested under the emergency provisions before they are charged.

Prisoners' awareness of their rights

269. Our first concern is to ensure that the prisoner should be made aware of his rights generally and of this right of access in particular. As in so many other instances, the anxiety on this account expressed in relation to Northern Ireland is not unique but exemplifies in acute form the anxiety felt in other countries with a system of law based on the common law. Sir Henry Fisher, in his report on the Confait case²⁴, makes proposals for ensuring, amongst other things, that the suspect is made aware of his rights in this respect, and for ensuring that solicitors are available to answer the call. In the judgment of the Supreme Court of the U.S.A. in *Miranda v Arizona*, in order to safeguard the privilege against self-incrimination enshrined in the Fifth Amendment, the Court specified procedures for informing the person in custody of his rights. At present, in Northern Ireland, there are available, as we have seen ourselves in the reception rooms, typewritten sheets, some of which are mounted on a wall, some on cards lying on the table, setting out a short statement of prisoners' rights, as required by the R.U.C. Code. We think that larger notices, more prominently displayed, are required, and **we recommend that each prisoner should also be given, on admission, a printed notice to keep for himself.** It should be made the duty of the uniformed staff to do this and, if the prisoner cannot read or understand it, to read and explain it to him. This goes little further than the existing requirements in the Code and in No. 7 of the Administrative Directions in Appendix B to the Judges' Rules. Equally importantly, **we recommend that a duty should be imposed on the uniformed staff to convey any request for access by telephone to the solicitor, where such access is authorised.**

Refusal of access to solicitors

270. The evidence of the R.U.C. to our inquiry is inconsistent when it comes to deal with the reason behind the refusal to allow access by solicitors. It has first been said that the Judges' Rules were not drawn up to cater for the type of terrorist activity which exists in Northern Ireland, that the emergency legislation is designed to facilitate the development of a specific relationship between the prisoner and the interviewer which can lead to an

²³ See paragraph 77.

²⁴ *Report of an Inquiry by the Hon. Sir Henry Fisher into the circumstances leading to the trial of three persons on charges arising out of the death of Maxwell Confait and the fire at 27 Doggett Road, London SE6, December 1977.*

admission of guilt, and that access to solicitors at an early stage would frustrate this intention. The implication of these arguments, taken together, is that the principle in the preamble to the Judges' Rules is simply inapplicable. Yet, as we have seen, the R.U.C. Code defers at least to the Rules themselves. Elsewhere in the R.U.C.'s evidence to us, a different argument has been developed, namely that the proviso attached to the principle set out above applies with especial force to the special circumstances of law and order in Northern Ireland. It is thus implied that the refusal of the R.U.C. to allow access is not contrary to the principle set out in the preamble to the Judges' Rules, but is in conformity with it, given the scope of the proviso.

271. It appears to us that the latter argument rests heavily on a particular interpretation of the proviso, namely that the mere likelihood that the admittance of a solicitor will delay or prevent an admission being made constitutes of itself an unreasonable delay or hindrance to the processes of investigation. This contradicts the observations of Lawton, L. J. in *R. v. Lemsatef* (1977) 2 A. C. R. 835 at page 840:

"This court wishes to stress that it is not a good reason for refusing to allow a suspect, under arrest or detention, to see his solicitor, that he has not yet made any oral or written admission."

Sir Henry Fisher's report, at pages 183 to 187, deals with the right to consult a solicitor and records evidence received by him from senior police officers from two English forces that the fact that it was thought that a solicitor, if called, would advise his client not to answer questions or make a statement should not and would not, as a matter of current practice, be regarded as constituting an unreasonable hindrance to the processes of investigation or the administration of justice. We have noted that in one case in England (*R. v. Allen and Others* (1977) Cr. L. R. 1963) McKenna, J., with the express purpose of marking the importance of compliance with the principles set out in the preamble to the Judges' Rules, excluded evidence of an interview conducted after the police had refused the suspect's request to consult his solicitor, a refusal based on the fear that the suspect might be advised not to answer the questions. We are not aware of any trial of a scheduled offence in Northern Ireland where the same course has been followed.

272. The R.U.C. officers who gave evidence to us made no secret of the reason for the refusal of access; it was that, since the only advice a solicitor could give to his client was not to admit anything, access to a solicitor could only frustrate the obtaining of a confession in cases in which the prisoner would otherwise have been willing, sooner or later, to make one. We are aware that there are circumstances in which a solicitor called in to advise an arrested client might advise him to make an admission to the police in his own interests as, for instance, where the evidence against him already available to the police was strong and an admission of guilt at an early stage, coupled with an expression of regret, might be a useful point at a later stage in mitigation of sentence. These factors are unlikely to exist in the situations we are dealing with, where often the only evidence which can be put forward as such in court is the admission of the prisoner and where an expression of regret would ill accord with the known political affiliations of the prisoner. We therefore accept that in these circumstances the intervention of a solicitor will almost certainly hamper the police in the obtaining of an admission.

The need for further provision

273. However this matter is rationalised or explained, the fact is that a safeguard of the rights of the subject, designed to be protected by the Judges' Rules, is effectively suspended by this consistent policy of denial of access to a solicitor. One particular aspect of the matter with which we are concerned is expressed thus at page 56 of the Amnesty International report:

"The apparent decision, not based upon any consideration of the case in question, never to allow suspects arrested under the emergency legislation access to a solicitor while in custody is in breach of a fundamental principle of common law. It gives rise to an inference, whether or not justified, that not all statements are made voluntarily."

This statement leaves out of account the proviso to the principle, which justifies refusal of access in some cases, but the inference drawn is inescapable when considered in the context of a period in custody which may last up to seven days. We note also the comment recorded in the next following paragraph of the Amnesty report by a group of experienced solicitors that this denial of access is one of the three factors of extreme importance in the situation which they believe to have come about, namely, that ill-treatment of suspects by police officers with the object of obtaining confessions is now common practice. Whilst we do not accept this sweeping conclusion, it would be difficult to deny that denial of access may conduce to ill-treatment.

274. We have noted that the Amnesty International report recommends that the immediate measures to protect prisoners against ill-treatment should include access to lawyers at an early stage of the detention. We have received representations to the same effect from solicitors practising in Northern Ireland. The evidence to us of the Alliance Party included a suggestion that solicitors should be permitted to see their clients within seventy-two hours of arrest (even when a suspect is to be held for a total of seven days) and, in any event, before any person to be charged is charged. The Alliance Party has also suggested that solicitors should have the right to be informed if their client is in fact in a police station, under what provision of law he is being held, and how long he is likely to be held. We have noted the comments in Lord Shackleton's report²⁵ at paragraph 148, where he says:

"I accept that access may need to be withheld in the early stages of detention under the Act²⁶. But the justification for this course must become weaker as the days pass. While I believe that to grant unconditional right of access to a solicitor after, say, forty-eight hours would be out of keeping with the philosophy underlying the present Judges' Rules and Administrative Directions that the police should have a limited discretion to withhold access, I should not expect the considerations which may legitimately lead the police to deny access in the early part of a period of detention to have the same force in its later stages. It would be quite exceptional, in my view, for there to be sufficient grounds to deny a person in custody the right of access to a solicitor throughout a seven day period."

We are also aware that the Royal Commission on Criminal Procedure has received a large number of representations on this topic.

²⁵ See above, paragraph 3.

²⁶ i.e. the Prevention of Terrorism (Temporary Provisions) Act 1976.

275. With these matters in mind, we have considered what measures could be taken to limit or control the exercise of the discretion of the police to refuse a request for the services of a solicitor. We first considered whether, after such a request had been made, the decision whether access should be allowed might be referred to and made by a police officer of high rank, not personally concerned with the particular investigation being carried on. The suggested advantage of such a procedure would be that such an officer would be speedily available and would be able to take the decision with a more impartial view than the investigating officer of the balance between the rights of the prisoner and the question of any unreasonable delay or hindrance to the investigation. But we take the view that any police officer, however hard he might strive to be impartial, will find it difficult to reject another officer's reasons for refusal. We cannot think that such a proposal would work satisfactorily, or be regarded as satisfactory by anyone other than the police. We next considered the possibility of some procedure for appealing against a refusal of access to a magistrate or judge. The advantage in this would be that a final decision would be obtained from an independent person. The difficulties would, we think, arise from the practical problems of presenting such an appeal (for example, the availability of a magistrate or judge), the delay necessarily involved in bringing the matter before him, and the difficult decision whether the interrogation should be suspended pending the appeal. In any event the possibility has to be faced that the interrogating officers might simply ignore any attempt to exercise the right to appeal against their refusal to grant access. For these reasons we do not regard these possible solutions as satisfactory.

276. We next considered the provision made in other systems of law and in other proposals for reform whereby, a power of arrest and detention for questioning for a limited period having been granted to the police, the prisoner, if not released at the end of that period, is granted an absolute right to see his solicitor after that period. Examples we have had quoted to us have been 4, 6 or 8 hours. We have considered whether a solution on these lines is practicable and desirable in Northern Ireland. It must surely be conceded that the power to keep a prisoner in custody for questioning for as long as seven days is a very considerable power, justified only by the gravity and frequency of the crimes committed. To add to this a consistent refusal to allow access to a solicitor for the whole period seems to us to be unjustifiable. The principle set out in the preamble to the Judges' Rules may be held to be inapplicable to arrest and detention pursuant to the Prevention of Terrorism Act or the Northern Ireland (Emergency Provisions) Act. It is to be hoped that the courts will take the opportunity when it arises in a case before them of pronouncing whether this is so or not. If the principle does not apply in such cases, then the need to make new provision for prisoners so arrested to have access to a solicitor is clear. If the principle does apply, then it is equally clear that new provision needs to be made to control the exercise of the discretion of the police to refuse access, for when the purported exercise of a discretion always brings about the same result, it is a fair inference that the discretion is either not being exercised at all or not being exercised fairly. So far as we are aware, the courts in Northern Ireland have not ruled any

statement given by a prisoner to be inadmissible on the ground that access to a solicitor has been denied. The exercise of this particular discretion of the police is therefore in practice virtually uncontrolled by the courts.

277. With these considerations in mind, we have come to the conclusion that the only solution is to grant to prisoners arrested under the Prevention of Terrorism Act and the Northern Ireland (Emergency Provisions) Act an absolute right to access to their solicitors after a stated number of hours. Bearing in mind the grave situation in Northern Ireland, **we have concluded that such a right should be granted after detention for 48 hours**, on the assumption that the prisoner had not by then been charged and had not already been allowed to consult his solicitor. This proposal should in no way be interpreted as diminishing such rights as the prisoner may have to access to his solicitor from the outset of his detention, provided that this would cause no "unreasonable delay or hindrance in the processes of investigation or the administration of justice". Such exceptions frequently obtain in situations where terrorists are active. The isolation of a prisoner from all contact with the outside world is often necessary in order to effect the arrest of associates or the discovery of arms or the material for making bombs. We consider, however, that 48 hours should provide reasonable time for police enquiries and searches of this kind to be pursued, and indeed we have heard evidence to this effect. We have not forgotten the importance of the results of interrogation, but it is our view that our proposal if carried into effect would not only secure to a prisoner the benefit of advice about his rights but might prove to be an extra deterrent against the possibility of ill-treatment; if ill-treatment nevertheless occurred, it would enable the complaint to be made to and recorded by an independent person acting solely in the interests of the prisoner at a reasonably early stage.

278. We think that it is necessary that the extent of the right should be clearly defined. Because of the gravity of the situation in Northern Ireland we think that the right would have to be limited to one of consultation out of hearing, but not out of sight, of the police and everyone else for a reasonable time. There could be no question of the solicitor being present at or during interviews. We have considered the question of the prisoner's further period of detention after the initial visit of the solicitor, which might extend for another 5 days. It seems to us that in such cases, in order to achieve the desired result, the right would have to be extended to allow access at the expiry of each further period of 48 hours, and **we so recommend**.

279. We have considered how our proposals could be carried into effect in Northern Ireland, and have had in mind that the provisions for arrest and detention in the Prevention of Terrorism (Temporary Provisions) Act 1976, and the Judges' Rules, apply also in England and Wales. Pending any changes in the legislation or in the content or status of the Judges' Rules, we recommend that the change which we recommend should be brought about by an amendment to the R.U.C. Code. **A clear duty should be laid upon the officer in charge of the prisoner to carry out this provision, so that any breach of this duty could be dealt with as a disciplinary offence.**

Availability of solicitors

280. As to the availability of solicitors to respond to prisoners' requests, the situation has not so far been tested in Northern Ireland. We are aware of difficulties that have been found elsewhere but, having regard to the numbers of solicitors practising in Belfast and other towns and to the existence of organisations expressly founded to assist prisoners, we foresee little difficulty in this respect. We assume that provision could be made for payment of these services in appropriate cases from Legal Aid, even where the prisoner is released without any charges being made.

Information to relatives

281. As we have noted in Chapter 6, there is satisfactory provision in the R.U.C. Code for notice to be given to relatives of a prisoner's admission to custody. We have nevertheless been told by a number of witnesses that families have on occasion found difficulty in finding out whether one of their members had been arrested by the police, and if he had, where precisely he was being kept in custody. It is understandable that in the conditions prevailing in Northern Ireland the disappearance of anyone is of great concern. On the police side, we have been assured that there should be no difficulty in this respect. **We recommend that they should re-examine this problem, as an administrative matter, and perhaps give greater publicity to the proper places at which families should make enquiries.**

Attendance by parents or guardians at interviews with juveniles

282. We have noted the special provision in the R.U.C. Code for the notification of parents or guardians of a juvenile when he or she is arrested. More important still is provision for the attendance of parents at interviews with juveniles. Unhappily in Northern Ireland, as time has gone on, ever younger people have been drawn into the commission of grave terrorist offences. Paragraph 4 of the Administrative Directions attached to the Judges' Rules deals with the interrogation of children and young persons and provides that as far as practicable they should only be interviewed in the presence of a parent or guardian or, in their absence, some person who is not a police officer and is of the same sex as the child (in England this role is often undertaken by a social worker or children's officer). Whereas the 1964 edition of the Administrative Directions left it slightly open up to what age this provision should apply, the new version published in 1978 extends the Direction clearly to all children and young persons under the age of 17. Apart from the general provision for statements to be taken in compliance with legal requirements and the Judges' Rules, no special provision is made in the R.U.C. Code for the presence of parents of children and young persons being interviewed, or for visits to children and young persons in custody. Some witnesses have expressed concern to us about the failure to provide for the interests of parents and their children. On the other hand, we have been made aware that some young persons would only be encouraged to maintain silence or denial by their parents. **We nevertheless recommend that, whenever a child or young person under 17 is interviewed, steps should be taken to secure the attendance of parents, and that the R.U.C. Code should be amended accordingly.**

PART IV

**PRESENT PROCEDURES
FOR DEALING WITH COMPLAINTS
RELATING TO INTERROGATION**

CHAPTER 15

THE LAW RELATING TO THE INVESTIGATION OF COMPLAINTS

283. We have in this part of our report confined ourselves, as our terms of reference dictate, to dealing with complaints received from a member of the public relating to the conduct of police in the course of the process of interrogation. It is an area in which four separate authorities play a part, namely the Chief Constable, the Director of Public Prosecutions, the Police Complaints Board and the Police Authority. To understand the part each plays, it is necessary to look at the laws which define their powers, and at a little of their history.

Legislative provision for the investigation of complaints

284. With regard to the investigation of complaints, section 13 of the Police Act (Northern Ireland) 1970 provides as follows:

“(1) Where a complaint is made by a member of the public against a member of the police force, the complaint shall be referred to the Inspector General²⁷ who shall (unless the complaint alleges an offence with which the member of the police force has then been charged) forthwith record the complaint and cause it to be investigated.

(2) Where a complaint which is investigated under sub-section (1) relates to a matter affecting or appearing to affect the public interest, the Inspector General may, and if so required by the Police Authority or the Minister shall, refer the complaint to a tribunal (in this section referred to as “the tribunal”).

(3) The tribunal shall consist of a barrister-at-law or solicitor of not less than ten years' standing appointed by the Lord Chief Justice and two members of the Royal Ulster Constabulary, or of any other police force in the United Kingdom, appointed by the Police Authority to act as assessors.

(4) The proceedings of the tribunal shall be conducted in public unless the Minister in the interests of security otherwise directs.

²⁷ By virtue of Regulation 5(i) of Part II of the *Royal Ulster Constabulary Regulations 1973* (S.R.N.I. 1973 No. 31), this reference to the Inspector General is now to be treated as a reference to the Chief Constable. From the following paragraph onwards, in referring to the Act, we incorporate this change.

(5) On receiving the report of an investigation under sub-section (1) and, if the complaint is referred under sub-section (2) to a tribunal, the report of the tribunal thereon, the Inspector General, unless satisfied that no criminal offence has been committed, shall send the report or reports to the Attorney General.²⁸

The procedures for the investigation of complaints and, thereafter, for the conduct of disciplinary proceedings are now laid down in the R.U.C. (Discipline and Disciplinary Appeals) Regulations 1977 (S.R.N.I. 1977 No. 236), and the R.U.C. (Complaints) Regulations 1977 (S.R.N.I. 1977 No. 235).

285. By this legislation and regulations, the Chief Constable is constituted the disciplinary authority for all ranks up to and including chief superintendent, whereas the Police Authority is such for the higher ranks. The Chief Constable, as have many chief officers of police in England and Wales, has delegated to a deputy chief constable (in fact the Senior Deputy Chief Constable) the responsibility for the investigation of complaints from the public and the duty of deciding whether a member of the R.U.C. should be charged with a disciplinary offence (pursuant to the power to do so in Regulation 10 of the Discipline and Disciplinary Appeals Regulations). Because of the ranks of the officers involved in interrogation, we have confined our enquiries to that sphere in which the Chief Constable is the disciplinary authority. We have also borne in mind that any complaint by a prisoner in custody about ill-treatment, certainly physical ill-treatment, by a police officer is likely to involve consideration of criminal as well as disciplinary proceedings.

Role of the Director of Public Prosecutions

286. Once the officer investigating the complaint has completed his report, and his senior officers have made their comments and recommendations on it, the Senior Deputy Chief Constable will, if a possible criminal offence is involved, send the report to the Director of Public Prosecutions. Section 13 of the Police Act, as we have seen above, requires this to be done unless the Chief Constable "is satisfied that no criminal offence has been committed". This is the same as the law in England and Wales. It is also relevant, however, that in accordance with Article (3)(a) of the Prosecution of Offences (Northern Ireland) Order 1972, the Chief Constable is in any event required to send the Director information about indictable offences alleged to have been committed, whether by a police officer or by any other person, against the law of Northern Ireland. The Director, moreover, has also requested the Chief Constable (in accordance with his powers under Article 6(3)(b) of the Order) to send him allegations of any criminal offences alleged to have been committed by police officers. This request by the Director, with which the Chief Constable is bound by law to comply, goes beyond the requirements of section 13(5) of the Police Act.

Functions of the Director in relation to complaints

287. The office of Director of Public Prosecutions for Northern Ireland was set up by the Prosecution of Offences Order to which we have just referred. His functions, as set out in Article 5 of the Order, include the following:

²⁸ Article 6(4) of the *Prosecution of Offences (Northern Ireland) Order 1972* also requires copies of the report or reports to be sent to the Director of Public Prosecutions.

"(c) where he thinks proper to initiate, undertake and carry on on behalf of the Crown proceedings for indictable offences and for such summary offences . . . as he considers should be dealt with by him."

He is responsible to the Attorney General for the due performance of his functions. The right of private prosecution is expressly preserved, although the Director "may undertake at any stage the conduct of those proceedings if he thinks fit". It is to be noted, first, that the provisions of Article 5 give the Director a complete and unfettered discretion in making his decision on matters within his responsibility and, second, that (subject to his general responsibility to the Attorney General) he is in an independent position. These characteristics he shares with the Director of Public Prosecutions in England.

288. The Director has no power to investigate, or staff to do so. Any further information he may require will be furnished to him by the Chief Constable in accordance with Article 6(3) of the Order.

Link between the consideration of complaints and other criminal proceedings

289. The Director often finds himself in the position of having before him the case for consideration for the prosecution of an accused person for a scheduled offence, in which the principal evidence against the accused is his voluntary confession obtained during interrogation, when a complaint has been made by the accused alleging against the officer or officers who were concerned in the interrogation that he or they have assaulted or ill-treated him. Any such allegation by the accused is clearly most important as the obvious foundation for a submission based on section 8 of the 1978 Act that his confession is inadmissible. In order to assist him in dealing with this matter the Director, in a special direction issued under Article 6(3)(b) of the 1972 Order on 15 February 1978 to the Chief Constable, requested that the evidence with regard to the treatment of any such person and the allegations made should be investigated, and that he be supplied with all the available information before giving his direction for prosecution or non-prosecution of the accused. The purpose of this request is stated by the Director to be both to enable a decision to be reached as to whether a particular statement should be given in evidence on behalf of the Crown, and to enable counsel to be instructed properly for the conduct of the prosecution and, where appropriate, for counsel to advise with regard to the ability of the prosecution to discharge the burden of proof which lies upon the Crown under section 6(2) (now section 8(2)). This direction requires the investigating officer to make findings in his report about any injury sustained by the complainant while in police custody, and the cause of any such injury. Moreover, the direction provides, "It is necessary to know from the outset the accused person's account of his treatment while in custody", and it goes on to request that the accused person be invited to provide a detailed statement of his evidence in support of his complaint or allegation. Proper provision is made for the accused to be made aware that he is under no obligation to give a statement, and, where the accused is represented by a solicitor, for the invitation to be made through the solicitor.

290. The Chief Constable is bound to comply with the Director's request for information. To the extent, therefore, that compliance requires the formal procedure for the investigation of complaints to be invoked—we consider

this question slightly further in Chapter 17—the Director's request has the effect of further modifying the law relating to the investigation of complaints as expressed in the Police Act. Incidentally, it also increases the divergence between the law in Northern Ireland and the law in England and Wales, for in England and Wales the law does not require, or is not interpreted as requiring, the investigation of complaints before the trial of the complainant. The Home Office issued a circular in 1977 to police authorities and police forces in England and Wales about police discipline and complaints procedures; and pending the issue of guidance by the Secretary of State for Northern Ireland, the R.U.C. rely generally on this circular, which contains the following passages:

"A common type of case where problems of timing may arise is one in which the complaint and the allegation involved in it are directly or closely associated with criminal proceedings which are pending. In such a case, save in exceptional circumstances . . . , it is suggested that the complaint should be regarded as being in effect *sub judice* and that investigation should ordinarily be deferred until the conclusion of the trial."

"There may, however, be exceptional circumstances where it is proper to proceed with the investigation of the complaint provided that the complainant is legally represented and that it is clear that the solicitor representing him, while fully appreciating the prejudice which could result to his client were he to be interviewed prior to the determination of the proceedings, indicates that he nonetheless desires that the complaint should be investigated immediately. One such example might be if the complaint appears so cogent that it makes the Deputy Chief Constable doubtful after taking legal advice whether it is proper to continue with the prosecution at all."

291. We understand that in England and Wales the circumstances described in the second of these passages arise only very rarely. In Northern Ireland, however, the effect of the Director's request is that an investigation of the complaint is carried out before the trial of the complainant in every case where the allegations are relevant to criminal proceedings, except that the Director's request excludes cases where the complaint arises out of the specific incident in respect of which the accused is charged.

292. If the Director decides to initiate a prosecution against the accused, then further formal consideration of his complaint will be deferred until after the case against him is complete. If he is jointly charged with co-accused, who may be concerned in additional criminal charges, or if the accused is convicted and he appeals against conviction, the Director's consideration of the complaint will be further deferred. If the Director decides to prosecute a police officer, the prosecution will proceed in the normal way. If he decides against any prosecution of a police officer, he will normally mark the file "no prosecution" and it is then returned to the office of the Senior Deputy Chief Constable.

Disciplinary proceedings

293. At this stage the Senior Deputy Chief Constable considers whether disciplinary proceedings should be brought against the police officers involved

in the complaint. The disciplinary offences with which R.U.C. officers are liable to be charged, if the circumstances warrant it, are set out in the Discipline Code which appears as Schedule I to the Discipline and Disciplinary Appeals Regulations.

"Double jeopardy"

294. A difficult question of law is raised when a complaint is such as to afford the basis at the same time for a criminal charge and a disciplinary charge. Article 14 of the Police (Northern Ireland) Order 1977 provides as follows:

"(1) Where a member of the police force has been acquitted or convicted of a criminal offence he shall not be liable to be charged with any offence against discipline which is in substance the same as the offence of which he has been acquitted or convicted.

(2) Paragraph (1) shall not be construed as applying to a charge in respect of an offence against discipline which consists of having been found guilty of a criminal offence."

295. Thus an officer can be found guilty, in accordance with the Discipline Code, of the disciplinary offence of "criminal conduct" in respect of an offence for which he has been convicted by a court; but he cannot, for example, be accused of the disciplinary offence of using unnecessary violence towards a prisoner if a court has already acquitted him of the criminal offence of assault on the basis of the same set of circumstances.

296. The rule against "double jeopardy" is regarded by police officers as of the first importance to them on the ground that it affords them the same protection as is enjoyed by any citizen by the general rule that no man shall be put in peril of conviction twice in respect of the same matter. In practice, it has always been applied more widely than is indicated simply by the legislative provision to which we have referred in the preceding paragraph. The Home Office circular to which we have referred in paragraph 290 sets out the considerations which chief officers of police (and the Police Complaints Boards) are advised to apply. We note particularly the passage in the circular where it is stated that if the decision has been made not to prosecute the officer, "there should normally be no disciplinary proceedings if the evidence required to substantiate a disciplinary charge is the same as that required to substantiate the criminal charge". The circular does, however, give instances where, although prosecution cannot be undertaken, disciplinary proceedings may be possible.

Procedures for determining disciplinary charges

297. If it is decided to initiate disciplinary proceedings, then (unless the officer admits the charge) the Discipline and Disciplinary Appeals Regulations make very detailed provision for formal hearings including the hearings of witnesses before (usually) the Chief Constable, for his finding to be given in writing, and for the imposition of one of a variety of penalties. These range from dismissal from the force at the worst, to a caution at the least. Provision is made for the officer to appeal to the Secretary of State against

any adverse finding. Regulation 25 requires the Chief Constable to cause to be kept a discipline book in which shall be entered every charge against a member of the force and every decision thereon.

The Police Complaints Board

298. The Police Complaints Board was set up by the Police (Northern Ireland) Order 1977, as was a similar Board for England and Wales at about the same time, with the same intention of introducing a fresh element of public participation into the handling of complaints. The Board has no role and no part to play in any criminal proceedings against an officer, although they may request the Chief Constable to transmit to the Director of Public Prosecutions information that may be relevant to the question of criminal proceedings.

299. Provision is made in Articles 4 and 5 of the Order for the Board to receive copies of complaints and copies of investigation reports. The latter are to be accompanied by a statement from the Chief Constable of his opinion on the merits of the complaint, and whether he has preferred disciplinary charges; if so, what charges, and if not, his reason for not doing so. The Board is given power to request the Chief Constable to furnish it with such additional information as it may reasonably require for the purpose of discharging its function in relation to disciplinary charges. The Board may make recommendations as to the disciplinary charges which it considers should be preferred, and as a last resort may direct the Chief Constable to prefer such charges as it may specify. It may in certain circumstances direct that a disciplinary charge shall be heard by a tribunal consisting of the Chief Constable in the chair and two members of the Board. If the officer is found guilty (if necessary by a majority of the tribunal), the punishment is determined by the chairman after consulting the other members. Article 8 makes it plain that where the question of criminal proceedings is raised and the complaint is referred to the Director, the exercise of the powers of the Board must be deferred until the Director has dealt with that question.

Role of the Police Authority

300. Until 1970 the R.U.C., which is the police force for the whole of Northern Ireland and is funded entirely by Exchequer contributions, was under the administrative control of the Ministry of Home Affairs, a department of the Government of Northern Ireland. This arrangement was criticised because, amongst other reasons, the R.U.C. was said to be too closely associated with the Government and not accountable to the community in general. On the recommendation of the Hunt Committee²⁹ the Police Authority was set up under the Police Act (Northern Ireland) 1970. The Act provided that the independent membership of the Authority, appointed by the Governor (now the Secretary of State), should be representative of the community and should include representatives of specified bodies and interests. Under section 1(2) of the Police Act, the Police Authority has the duty to "secure the maintenance of an adequate and efficient police force in Northern Ireland and to carry out all such functions as are conferred on them by this Act". The operational control of the force, however, remained and remains with its chief officer; section 6(2) of the Act provides that "The police force . . . shall be under the direction and control of the Chief Constable".

²⁹ *Report of the Advisory Committee on Police in Northern Ireland*, Cmnd. 535, October 1969.

301. Section 12 of the Police Act provides as follows:

“(1) It shall be the duty of the Police Authority to keep themselves informed as to the manner in which complaints from members of the public against members of the police force are dealt with by the Chief Constable.”

Up to the present time the Authority has largely performed this duty through its Complaints and Publicity Committee, which meets every month. The Senior Deputy Chief Constable attends these meetings, and presents information about complaints received and the stage reached in their investigation. In addition to their duty “to keep themselves informed as to the manner in which complaints from members of the public against members of the police force are dealt with”, the Authority have a general power under section 15(2) of the Act to require reports from the Chief Constable “on such matters as may be specified in the requirement”. If the Chief Constable is of the view that a report as required by the Police Authority is not needed for the discharge of the functions of the Authority, or would contain information which in the public interest ought not to be disclosed, he may request the Authority to refer the requirement to the Secretary of State, and the requirement is then of no effect unless the Secretary of State confirms it.

302. As previously mentioned, the Authority has power under section 13(2), (3) and (4) of the Act, where a complaint “relates to a matter affecting or appearing to affect the public interest”, to require the Chief Constable to refer the complaint to a tribunal consisting of a lawyer appointed by the Lord Chief Justice and two police officers appointed by the Authority themselves.

Operation of the legal requirements relating to complaints

303. The primary legislation and subordinate orders and regulations summarised above are expounded and expanded in a separate section of the R.U.C. Code, which contains extremely detailed provisions for the conduct of the investigation of complaints and sets out, for example, the specimen forms which are to be used. Although it is not necessary for us to consider these provisions in great detail, we describe briefly in the next chapter how the investigation is actually conducted, and in Chapter 17 we assess the effectiveness of these procedures. In Chapter 18, we deal with the way in which the Director of Public Prosecutions, the Police Complaints Board and the Police Authority have exercised their duties and powers in relation to complaints, and in particular with the dissatisfaction felt by the Board and the Authority about the way in which the system operates.

CHAPTER 16

THE INVESTIGATION OF COMPLAINTS: PRACTICAL ASPECTS

304. In the previous chapter we have set out the main features of the law prescribing how complaints against the R.U.C., in the area with which we are concerned, shall be dealt with. The present chapter describes how these provisions of law are put into practical effect, and some of the problems and difficulties which are met. Later in the report, in Chapters 17 and 18, we make an assessment of the present law and practice and some recommendations.

How complaints arise

305. A complaint may be made either orally or in writing to any police officer (or, since September 1977, directly to the Police Complaints Board, but they must then send it to the Chief Constable). In the circumstances with which we are concerned, a complaint is most likely to be made either

- (a) to a medical officer during his conversation with or examination of the prisoner. The medical officer will note details of any allegations made by the prisoner (although it is not his job to interrogate him, for example, about the identity of officers who he alleges have assaulted him), and will communicate these to the uniformed police staff;
- or (b) to the prisoner's own doctor when he is examined by him whilst in police custody. In the case of persons arrested in respect of terrorism or scheduled offences, section 49 of the R.U.C. Code prescribes that the officer in charge of prisoners should ask the private doctor whether the prisoner has made any allegations against the police and whether any injury has been found. If an allegation is then made against the police, it is treated as a formal complaint;
- or (c) to the uniformed police staff at any time during the prisoner's detention. The most obvious occasion for this is immediately before the prisoner's discharge or transfer, when (if he has been arrested for a scheduled offence or in respect of terrorism) he will be invited to reply in writing to the question whether he has any complaints to make against any police officer in respect of his stay in police custody. It is, however, by no means unknown for prisoners to certify that they have no complaint, and yet to make a complaint in writing later. An obvious possibility is that they are encouraged later to fabricate a complaint, but an alternative explanation is that they fear reprisals if they complain whilst still in police custody;
- or (d) in writing after the prisoner has left police custody.

306. A complaint may also, of course, be made to the detective officers who interview the prisoner, but we understand that this is more rare. If it happens, the R.U.C. Code requires the detectives to note the complaint carefully, both in their own notes of the interview and on the Prisoner Arrest Form, and to report it to the person in charge (i.e. the uniformed officer having care of the prisoners) as soon as possible.

Steps to be taken immediately upon a complaint being made

307. When a prisoner makes a complaint at a police station or police office, the R.U.C. Code prescribes that a statement should be taken from him by a member of the force—that is, a uniformed officer—of the rank of sergeant or above. It is clearly the responsibility of this officer to encourage the complainant to give sufficient detail of his allegations to enable his complaint to be adequately investigated but not, as we understand it, to probe or challenge him on his story. Some prisoners who make complaints to a medical officer immediately before transfer or discharge decline subsequently to make a written statement to a police officer.

308. When a complaint of conduct of a criminal nature (and almost every complaint by suspect terrorists contains criminal elements) is received in a police station or police office, the uniformed staff are required by the R.U.C. Code to inform the Sub-Divisional Commander at once. He is required by the Code to take immediate steps to ascertain the truth of the matter and to obtain, preserve and record evidence which would otherwise be lost by delay. Such steps may, for example, include sealing off an interview room in which an assault is alleged to have taken place, pending expert forensic examination. When a Sub-Divisional Commander considers the matter to be serious—for example, if an assault on a prisoner is alleged—or if the complaint concerns an officer above the rank of sergeant, he is required to inform his Divisional Commander without delay of the steps that he has taken. For his part the Divisional Commander, if he considers that an investigation should be begun immediately, is required to telephone the Complaints and Discipline Branch of the R.U.C., where investigating officers are on duty at all times. In practice, the measures referred to in the preceding two paragraphs are sometimes usefully compressed so that, for example, steps such as the arrangement of immediate forensic examination will be taken in consultation with the Complaints and Discipline Branch.

Formal recording of complaints

309. Particulars of any complaint, including for example the name of the person to whom it was made and the time and place of the events in question, are required to be recorded on a standard form supplied for that purpose; and this form, together with any accompanying statements by the complainant or other persons, is forwarded to the Complaints and Discipline Branch at R.U.C. Headquarters.

Volume of complaints

310. Figures about the number of complaints against the R.U.C. and their outcome are given in the Chief Constable's annual reports to the Police Authority. These do not, however, distinguish complaints from persons detained as suspect terrorists, nor do the published figures extend beyond 1977. The R.U.C. have kindly supplied us with unpublished figures which go into more detail and which extend into 1978. An abstract of the relevant statistics since 1975 is given in Appendix 2 to this report. A very considerable amount of research would be necessary in order fully to analyse the complaints received in terms of the type of misconduct alleged, or to attempt to draw reliable

inferences from the pattern of complaints. Such research has been beyond our resources. The figures nevertheless suggest some obvious points which need to be borne in mind, or which might usefully be explored, in considering such questions as how the investigation of complaints should be organized and whether a high level of complaints is inevitable irrespective of what the police do.

311. The total number of complaints recorded against members of the R.U.C. rose sharply (by 34 per cent) between 1975 and 1976 and rather less dramatically between 1976 and 1977 (9 per cent) and between 1976 and 1978 (1.6 per cent). In England and Wales, for comparison, there was an overall rise between 1975 and 1976 of 18.4 per cent and between 1976 and 1977 of 20.7 per cent³⁰. Broadly speaking, therefore, it seems likely that there has been an increasing propensity to complain throughout the United Kingdom as a whole in recent years.

312. In Northern Ireland, between 1975 and 1976 and again between 1976 and 1977, the rate of increase in the number of complaints alleging assault during interview was very much greater even than the rate of increase in complaints against members of the R.U.C. as a whole. Between 1975 and 1976 the increase was 113 per cent and between 1976 and 1977 it was 75 per cent. In 1978, however, the number of such complaints went down very considerably, to below the 1976 level. Corresponding figures are not readily available for England and Wales.

313. One would expect changes in the numbers of complaints about the treatment of persons held in custody for questioning to show some correspondence with changes in the numbers of persons so held, and the figures for Northern Ireland do so up to a point. But, between 1975 and 1976, the increase in the number of complaints of assault during interview was greater than the increase in the number of persons arrested under emergency legislation or for scheduled offences (see paragraph 44 above), and between 1976 and 1977 the rise in the number of such complaints took place despite a slight drop in the number of persons so arrested. Overall, taking the years 1975 to 1978 inclusive as a whole, the ratio of complaints received alleging assault during interview to the number of persons arrested under emergency legislation or in respect of scheduled offences has been approximately 1:8.

314. Among the figures which have been supplied to us at our request by the R.U.C. are some which show complaints received on a month-by-month basis and for different police stations separately. These do not suggest any conclusions so striking as to warrant being reproduced in this report, but they do show as a general matter that the ratio of complaints received to suspects detained is not uniform from month to month, whether generally or at individual police offices or police stations, or from place to place. For example, between the beginning of May and the end of September 1978, no complaints of assault during interview were received from terrorist suspects at Gough.

³⁰ Figures amalgamated from *Annual Report of H.M. Chief Inspector of Constabulary for 1975* (H.C. 482), *1976* (H.C. 414) and *1977* (H.C. 545) and *Report of the Commissioner of Police of the Metropolis* for those years (Cmnd. 6496, Cmnd. 6821 and Cmnd. 7238).

315. It has not been our business, and we have not had the means, to reach any general conclusion about the extent to which complaints are true or false. But we have already been concerned, in Chapter 8, with some of the factors which may be applied to this question, and in Chapter 17 we consider further such questions as why prisoners should make false complaints.

Volume of complaints against individual police officers

316. A majority of complaints by persons arrested for questioning are, or at least contain, allegations of assault during interview. It is against members of the C.I.D., and not against members of the uniformed branch, that allegations of assault in custody are made. The number of C.I.D. officers in a position to be complained about in this way is limited: we have been informed by the R.U.C. that some 464 officers of the C.I.D. between the ranks of detective chief inspector and detective constable are regularly engaged in interviewing terrorist suspects.

317. In practice, however, the burden of complaints does not fall equally even on C.I.D. officers engaged in interviewing. Some officers, including some whom we met informally in police stations, have a very large number of complaints (past and current) registered against them. A number of explanations may be found for this fact, some of which imply no criticism of the officers concerned—for example, the deliberate fabrication of complaints against particular officers. Only the Chief Constable and his senior officers have access to all the information which would be necessary to come to a judgment about what the most likely reasons are in each case. The fact that some officers are the subject of so many complaints ought in our view to be of concern to them, and is a matter requiring the attention of and appropriate action by senior supervisory officers.

The investigation of complaints

318. A separate branch of the R.U.C., called the Complaints and Discipline Branch, is responsible for recording and processing all complaints against members of the force and for arranging for their investigation. From the formation of the Branch in 1970 until 1974, its staff was merely administrative: they monitored investigations, but all investigations were actually carried out by divisional officers. From 1974 onwards, however, the Branch has been increased in strength, and it now contains a Central Investigation Unit of full-time investigating officers who themselves investigate the more serious complaints and reported breaches of discipline. From June 1976 onwards, the Branch has had officers available for this work at all times, including nights, weekends and holidays, on a call-out basis. The Complaints and Discipline Branch now represents a very considerable expenditure of resources in terms of officers of supervisory rank. Headed by a chief superintendent, its administrative staff consists of three superintendents, one chief inspector, one inspector and supporting officers and civilians. The strength of the Central Investigation Unit consists of two superintendents, 13 chief inspectors and two inspectors.

Role of the Senior Deputy Chief Constable

319. Since the appointment in November 1973 of a Senior Deputy Chief Constable in the R.U.C., this officer has had overall charge of the Complaints and Discipline Branch, the chief superintendent at the head of which is directly responsible to him. As noted in Chapter 15 above, the Chief Constable has exercised his power to delegate to the Senior Deputy the duty of deciding whether a member of the R.U.C. shall be charged with a disciplinary offence. He is also primarily responsible for the performance of the duties of the Chief Constable in relation to the Police Complaints Board and the Director of Public Prosecutions (see below). We understand that complaints against the R.U.C. are brought to the attention of the Senior Deputy Chief Constable on a daily basis as they are recorded, and that he takes a close personal interest in the progress of investigations both in overall management terms and, where necessary, in terms of the detail of particular cases.

Appointment of an investigating officer

320. The law in Northern Ireland requires that the officer appointed to investigate a complaint shall not be in the same division or branch of the R.U.C. as the officer subject to investigation, that he shall be an officer of or above the rank of inspector, and that he shall be of a rank not lower than two ranks above that of the officer subject to investigation where that officer is of or below the rank of inspector³¹. Thus, although in Northern Ireland a sergeant or even a constable may carry out the main practical work involved in investigating a murder, when it is committed by a terrorist, any complaint against a police officer, however trivial, must be investigated by at least an inspector. In England and Wales, outside London³², an investigating officer must be of or above the rank of superintendent—two ranks above the minimum rank required by the Northern Ireland regulations. We understand that the reason why the minimum rank required in Northern Ireland is lower is because of the relatively much greater incidence of complaints which, if only superintendents were allowed to investigate them, would keep those officers from other duties to an unacceptable degree. This question does not, however, arise to any great extent as a live issue in our inquiry because, in the case of complaints from terrorist suspects, investigations are either conducted by or are under the effective control of superintendents. In the normal course, as we have seen, an investigating officer may be either a member of the Central Investigation Unit, or a divisional officer combining this function with his regular duties. We are, however, informed that all complaints made by terrorist suspects are investigated by officers of the Central Investigation Unit. The investigation is normally put in the hands of a superintendent, but in each case he has a chief inspector to assist him and it is the chief inspector who carries out much of the actual detail of the investigation. The selection of an officer from the Central Investigation Unit to investigate a complaint is to a large extent a matter of routine, as one would expect, but we are informed that, in cases appearing to present special difficulty, the Senior Deputy Chief Constable is consulted by the head of the Complaints and Discipline Branch.

³¹ Regulation 6(2)(b) of the *Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1977*.

³² For the Metropolitan Police Area, the minimum rank is chief inspector.

The investigation

321. The investigation of a complaint follows broadly the same path as a police investigation of any allegation of criminal conduct. The first responsibility of the investigating officer is to attend to any further steps, beyond those already taken by the Sub-Divisional Commander, to save relevant evidence which might otherwise be lost—for example, to arrange expert forensic examination of the room in which an assault is alleged to have occurred, and possibly to have photographs taken. The investigating officer will obtain the relevant documentation from the police office or police station where the events took place. These show which detective and other officers interrogated the complainant and which uniformed officers were on duty as supervisors or gaolers at the relevant time. The most substantial part of his task, however, is to take statements from all the material witnesses. The most important such witness is obviously the complainant himself. The complainant will often have made his allegations to a medical officer or have made a formal statement to a uniformed police officer, or both. Often, however, he will not. In any event it is the investigating officer's duty to seek to obtain a statement, or a fuller statement, from him. We consider below the difficulties which he may encounter in doing this. Other witnesses include all the police officers who have had any dealings with or direct responsibilities towards the prisoner, any medical officers or outside doctors who have examined him or had contact with him, any other prisoner who may have been concerned with or have observed the events in question, and anyone else—such as a relative—who may have seen the prisoner whilst in custody.

322. When he has this material, the investigating officer draws up a covering report which summarizes the complaint, the facts as far as they can be ascertained, and the relevant evidence in support of and contrary to the complainant's story. In his report, the investigating officer also gives his opinion about the merits of the complaint and a recommendation about what steps should be taken by way of prosecution and/or formal disciplinary proceedings or other forms of disciplinary action. He is also expected to refer to any respects in which he thinks that action may be taken by management to render such complaints less likely or to improve the prospects of successful investigations in future. The report, with its accompanying material, is then submitted to the Senior Deputy Chief Constable.

Practical difficulties in the investigation of complaints

323. We leave over to the next chapter our consideration of the general difficulties which affect the outcome of any investigation. Here we are concerned with more limited practical points.

Interviews with witnesses

324. Leaving aside the complainant for the moment, the most numerous witnesses in an interrogation case are likely to be police officers. It is not difficult to obtain statements from police officers, in the sense that they are readily available in principle and do not, apparently, decline to give statements. But the detective officers regularly engaged in interrogation may be occupied for a lot of the time in giving evidence in court or in dealing with

further suspects, and a very great number may need to be interviewed in the course of a single investigation. Repeated visits to a police station or police office may therefore be necessary in order to see them all, although of course an investigating officer may conduct more than one investigation at a time.

325. Officers interrogating a prisoner do not always give him their names, and we have been concerned to know whether this led to difficulty in investigating complaints against them. We are informed that no great difficulty is encountered, because the records of interviews taken together with the prisoner's description suffice to enable the officer against whom he has complained to be identified. It nevertheless appears to us that this difficulty, such as it is, is an avoidable one. We have made our recommendation about it in Chapter 10.

326. The officers of the Complaints and Discipline Branch who gave evidence to us reported that they always receive full co-operation from medical officers employed or retained by the Police Authority. Their experience with doctors who have examined prisoners privately is less satisfactory, for although they always write to them and offer a professional fee in return for a report, they seldom receive a reply. In some cases, the doctors reply reasonably enough that they have been advised by their patient's solicitor not to provide a report until the patient's trial. This is an aspect of a wider problem to which we turn in a moment. If the doctor's report is clear and he includes a professional opinion as well as his clinical findings, the investigating officer does not normally find it necessary to interview him.

Interviews with complainants

327. Interviewing officers often fail in their attempts to interview complainants. Some reply to the written invitation sent to them, but decline to be interviewed; others simply do not respond. The investigating officer may waste a good deal of time waiting at a rendezvous for a complainant who does not turn up. The reluctance of many complainants to be interviewed is, in fact, the major practical difficulty in the investigating officer's path, and it arises largely from the coincidence between the investigation of complaints and criminal proceedings. In many cases the person who makes the complaint will have criminal proceedings outstanding against him, in which the same events are in question as those which form the basis of his complaint. This situation arises because the only practicable defence under the 1978 Act to a charge based on cogent evidence in the form of an admission is that ill-treatment was used to secure the admission, and most of the complaints with which we are concerned allege ill-treatment to this end.

328. As we have seen in Chapter 15 above, the Director of Public Prosecutions has requested the Chief Constable to furnish him, where a person has been charged by the police and has made a complaint or allegation concerning his treatment which is capable of raising an issue under section 8 of the 1978 Act, with evidence regarding the facts of his treatment and the complaint or allegation made. In practice the R.U.C. therefore supplies the Director with a complaints file containing the report of an investigation pursuant to

section 13 of the Police Act. In every case, therefore, an investigation is carried out before the trial of the complainant. The investigation thus conducted is, however, an interim investigation, in two senses: first, the Director will not normally finalize his conclusion of the question whether any police officer should be prosecuted, as a result of the complaint, until the complainant's trial or any other relevant criminal proceedings are concluded; and secondly, many complainants decline on legal advice to make a full statement to the officer investigating the complaint at this stage, and the investigation therefore has to proceed in the absence of such a statement. Later, if the prosecution of the complainant is dropped, or when all court proceedings against him are over, the officer investigating the complaint will again attempt to interview him. Even if the complainant has agreed to make a statement to the officer investigating his complaint before the trial, an attempt will still be made to re-interview him after the trial is over. This time the investigating officer and—it is to be hoped—the complainant will be less constrained in what they say to each other because there will no longer be the danger of prejudicing criminal proceedings against the complainant.

Reports to the Police Complaints Board

329. Brief particulars of each complaint³³, together with a copy of any written statement by or on behalf of the complainant, are sent immediately they are recorded to the Police Complaints Board. A fresh copy of the complaint, together with the investigating officer's report, is also sent to the Board on completion of that report³⁴, but in a case where a report is sent to the Director of Public Prosecutions for his consideration of whether a police officer should be prosecuted—as all or virtually all of the reports with which we are concerned are—the report is not sent to the Board until the question of criminal proceedings has been dealt with by the Director³⁵.

330. The report to the Board shows the opinion of the investigating officer about criminal proceedings as well as about disciplinary proceedings, and the decision of the Director of Public Prosecutions is conveyed to the Board by the R.U.C. The report also states whether disciplinary proceedings have been brought “in respect of the matter or matters complained of³⁶”, but it does not necessarily contain any information about disciplinary charges which may have been brought, or advice given to the officers concerned, about matters other than those contained in the complaint. The investigation of a complaint may, of course, reveal breaches of discipline of which the complainant had no knowledge or which lay outside the immediate scope of his complaint. As the law stands, these are not strictly the concern of the Board.

Reports to the Director of Public Prosecutions

331. As noted in Chapter 15 above, all allegations of criminal conduct by a member of the R.U.C. are referred, with a recommendation about criminal proceedings, to the Director of Public Prosecutions. The Director, as we have seen, requires to receive the interim report of the investigation

³³ With a few exceptions, such as where the complaint is made against an officer of the rank of assistant chief constable or above, which do not concern us here.

³⁴ See *The Police (Northern Ireland) Order 1977*, Article 5(1).

³⁵ *Idem*, Article 8(c).

³⁶ *Idem*, Article 5(1)(b)(ii).

at the same time as the evidence relating to the prosecution, if any, of the complainant. Where the complainant has not been charged, he receives the report of the investigation as soon as it is available. It is open to the Director to request the investigating officer to take further statements or make further inquiries, and he occasionally does so, although he informed us that the report as it stands is normally adequate for his purpose. He is not responsible, however, for the quality of investigations as such or for ensuring that the police attend to matters other than matters connected with a prosecution.

Disciplinary proceedings

332. In a case where the complaint is sent to the Director of Public Prosecutions as containing an allegation of criminal conduct, as virtually all those with which we are concerned are, no decision about disciplinary proceedings will normally be taken until the Director has reached his decision about criminal proceedings. The investigating officer may already, and quite legitimately, have offered an opinion on this matter, but the report to the Director will not refer to this opinion, or contain material relevant to the consideration of disciplinary as distinct from criminal proceedings, because the Director is not concerned with the disciplinary aspect.

Notification to the complainant

333. When a complaint is received by letter, it is acknowledged from the police station where it has been received. The complainant will in every case be contacted, either directly or through his solicitor, for an interview. Thereafter he will hear nothing until the investigation itself, and consideration by the Director of Public Prosecutions, are complete. He then receives notice in brief terms of what decision has been reached in relation to his complaint, and is informed that the report has been passed to the Police Complaints Board. The Board will themselves notify him of their own decision.

Records of previous complaints

334. Information from the investigation of one complaint may assist in the investigation of another. We understand that records of investigations are kept by the Complaints and Discipline Branch in such a way as to enable previous allegations against a particular officer, or allegations concerning matters in which he appeared to be involved, to be readily looked up. The Director of Public Prosecutions has also invited the police to furnish him with records of previous allegations made within the previous year of a similar character against the same officer.

PART V

COMPLAINTS RELATING TO INTERROGATION:
ASSESSMENT AND RECOMMENDATIONS

CHAPTER 17

THE EFFECTIVENESS OF THE COMPLAINTS PROCEDURES

Volume of complaints

335. As we have already made clear in Chapter 16, the volume of complaints against members of the Royal Ulster Constabulary has grown appreciably in recent years, just as it has against members of police forces in England and Wales. The number of senior officers engaged in the investigation of complaints is very large, and each complaint may take many weeks to investigate.

Reasons for the volume of complaints

336. There is no single explanation for the volume of complaints. It certainly cannot be assumed that their level is an objective measure of police misconduct. Some complaints, whether true or false, are of trivialities; and among the files that we have seen are some in which it is reasonably certain that the complaints are untrue or grossly exaggerated. It is not difficult to conceive of reasons why false complaints should be made. There has undoubtedly been a concerted propaganda campaign intended to discredit the R.U.C., although this alone can scarcely account for the volume of complaints; and it may be an object of the terrorist organizations simply to swamp the force with complaints and so reduce its operational efficiency. The police tell also of cases in which suspects have volunteered to interviewing officers that they will need to make unjustified complaints of ill-treatment in order to justify giving information, in view of the fact that informers are punished (often in the most savage ways) by terrorist organizations.

337. The most cogent explanation of all, at least in relation to suspects who are charged with an offence, is that a complaint is a necessary part of their defence at the court of trial. As we have seen in Chapter 5 above, in a trial for a scheduled offence, evidence consisting of an admission by the accused will by reason of section 8 of the 1978 Act be admitted unless a *prima facie* case is made out that he was subjected to torture or to inhuman or degrading treatment in order to induce him to make the admission. Provided the evidence is relevant, there is no other statutory ground for excluding it³⁷; and, if the admission by the accused is cogent evidence of his guilt, no other defence to the charge is possible than that the admission should be excluded. This fact provides a most powerful reason for alleging ill-treatment at the trial and for supporting the allegation with an official complaint lodged beforehand.

³⁷ As noted in Chapter 5, the Northern Ireland judges have retained their discretion to exclude evidence on other grounds, but an allegation of torture or inhuman or degrading treatment remains the most obvious basis for treating a statement as inadmissible.

Outcome of the complaints procedure

338. We are confident that the factors set out above are understood in Northern Ireland, and that no responsible observer supposes that all the complaints are justified. The converse danger, however, in a community menaced by terrorism, is that it will be assumed that **no** complaint by a terrorist or suspect terrorist is justified. The formal outcome to which the complaints procedure is designed to lead, in an appropriate case, is a criminal prosecution, or disciplinary proceedings on the basis of the police discipline code, against a police officer. We have recorded in Chapter 8 that, although criminal proceedings have been brought against a number of police officers in respect of alleged offences in the course of interrogation, no final conviction has resulted. We record here that, at least since 1974, no disciplinary proceedings have been brought in respect of the interrogation of persons in custody. The Chief Constable may also take less formal steps to act on complaints, such as moving officers to other duties; but, although we have heard of some occasions on which this has been done, it is for obvious reasons a measure which is not displayed to the public, and public confidence is not therefore increased as a result.

339. The evidence to this Inquiry has revealed scepticism on the part of many observers about whether the outcomes described above truly represent the extent of police misconduct in the course of interrogation, and consequent disquiet about the effectiveness of the complaints procedure when measured in terms of these results.

Limitation of complaints procedures

340. The ideal to be held in view is that the complaints procedure should conclusively identify cases in which any misconduct has occurred and should modify the conduct of interrogation to the extent that that may be necessary. No complaints procedure, however, is effective to quite this kind of extent. Whether in the professions, or Government service, or the Armed Forces, or industry or commerce, a procedure which gives satisfaction equally to the complainant and the person complained against is rare. The outcome is often inconclusive, and the complainant often feels that the benefit of the doubt has gone to the person against whom the complaint was made.

341. Having said that, however, there is a qualification which must be added when considering the treatment of persons held in police custody. Many of the difficulties encountered by police officers investigating complaints are of a kind which they also encounter every day in the course of investigating reports of crime. The lack of independent witnesses, for example, stultifies police investigations in many cases of reported assault; and the reluctance of people to offer evidence against themselves is of course a reason for the interrogation procedures with which earlier parts of this report are concerned. In ordinary life, there is nothing much that the police can do about this; they cannot expect citizens to have independent witnesses available in case they are assaulted. In the case of persons held in police custody, however, the public has higher expectations, because the conditions under which people are interrogated are dictated by the police themselves. They **can**, if they choose, ensure that witnesses are available on a contingency basis. It is therefore a

reasonable expectation that, if ill-treatment occurs, it will be witnessed and attested to. In Chapter 8, we have observed that a prisoner who walks into a police office unhurt and unmarked should be unhurt and unmarked when he leaves. We observe here that, if that is not so, it should be possible clearly to identify the reason. In the last resort this cannot be done by relying on the investigation of complaints alone because investigation, however searching and skilful it may be, cannot make up for any earlier deficiencies in observation, supervision and control. It is necessary therefore that the complaints procedure should not be looked at on its own, but that its lessons should guide and modify practices at the time when the matter for complaint arises; and we have ourselves had the operation of the complaints procedure very much in mind in framing our recommendations for the better supervision of interviews.

Efficiency of investigations

342. Are the procedures for investigating complaints as effective as they should be? We have considered the efficiency of the procedures in themselves, and we are satisfied that the system now in force makes full and detailed provision for the prompt investigation of complaints. The requirements of the R.U.C. Code on the subject of Complaints and Discipline are comprehensive, and we are unable to find any omissions which need to be made good or any amendments to suggest. We are further satisfied, on the evidence that we have heard and from the complaints files that we have seen, that the investigating officers carry out their duties promptly (they are encouraged to complete their enquiries within two or three months, which is reasonable in view of the delays and practical difficulties inherent in the process) and in a painstaking way. In any individual case there may, of course, be room for a difference of opinion about whether a particular person should have been interviewed as a possible witness, but where the complaint is of ill-treatment during interrogation the range of possible witnesses is well defined, and no-one has suggested to us that the investigating officers are deliberately depriving themselves of relevant evidence.

General difficulties affecting the investigation of complaints

343. It is, however, necessary to consider both the general difficulties which attend any investigation of an allegation of misconduct against a police officer, and the special difficulties which arise in relation to a complaint about interrogation.

Evidence from police officers

344. Since the investigation of a complaint is designed to lead in an appropriate case to criminal or disciplinary proceedings, the officer against whom the complaint is made must enjoy the same safeguards as any other person suspected of crime. In particular, he cannot be forced to make a statement against his own interests or against his colleagues. It has been alleged in the past that there has been a "wall of silence" among detective officers who interrogate prisoners—in other words, a conspiracy to prevent the facts from coming out, extending to widespread refusals to make any statement to the officers investigating complaints. This is not the position today; we have come

across no case in which an officer has refused a statement. The statements that are made, however, do not take the investigating officer very far. The evidence from police officers seems often to consist of short statements to the effect that the allegations are wholly denied (from detective officers who interrogate prisoners) or that nothing untoward was seen or heard (from uniformed officers). Officers against whom complaints are made are interviewed in accordance with the Judges' Rules, and this is generally held to entail that they be cautioned at the beginning of an interview. An experienced detective officer, whether cautioned or not, is not likely to incriminate himself. We have to consider the unwelcome possibility that the questioning by the officers investigating complaints may not be as searching or persistent as it might be. There is obviously a world of difference between formal questioning conducted in the expectation that no more than a blank denial will be obtained, and positive and persistent questioning. We have, however, heard no evidence to suggest any shortcoming in this regard; such an allegation is in any event difficult to prove or disprove.

Independent witnesses

345. As matters stand, there are not likely to be independent witnesses to the events in question—witnesses, that is to say, who do not have a personal interest in the outcome of the investigation. As we have seen in Chapter 6 above, the detective officers and the prisoner are normally alone in the interview room, and their conversation cannot normally be overheard. Thus, so far as any misconduct short of physical ill-treatment is concerned, there is little prospect at present of finding independent witnesses. As regards physical ill-treatment, there is perhaps a slightly greater possibility of finding witnesses, because other police officers may have heard a commotion or have looked through the “spyhole” at the critical moment. But no statement to this effect seems in fact to have been made to an investigating officer.

Other evidence

346. In these circumstances, investigations resolve themselves into considering the word of the complainant against the word of the police officers against whom the complaint is made, together with any circumstantial evidence that may be available by way of forensic examination of the interview room or medical examination of the prisoner. Although we are informed that forensic examinations are regularly carried out, they do not seem to yield a great amount of evidence. An enormous weight therefore hangs on medical evidence, although this can only be of value in cases in which the complaints are of physical oppression (and not necessarily in all of those, since an assault can take place without leaving marks).

Evidence from medical examination

347. A doctor may say, as a result of a medical examination, that the prisoner's condition is or is not consistent with his allegations. Even if injury is found, however, alternative explanations may be offered or inferred. The alternative explanation most commonly advanced by the R.U.C. is self-inflicted injury. An experienced doctor may be able in some cases, and to a high degree of certainty, to distinguish this from injury resulting from

assault, having regard to the nature, extent and site of injuries. In any case, many of the examples of self-inflicted injuries that have been mentioned to us—for example, swallowing foreign bodies or cutting wrists with knives—are clearly not of a nature to deceive the doctor into believing that an assault had taken place, but must be assumed to have had some other reason, such as halting the process of interrogation. In other cases, however, there may be room for doubt.

Results from investigations

348. For one or other of the reasons given above, or a combination of them, most investigations of complaints are unsatisfying in the sense that they do not lead to a clear-cut result in terms of deciding whether the events complained of did or did not take place or whether particular officers were or were not responsible for them. It is again to be emphasized that the standard of proof required in order to obtain a finding of guilt against a police officer, as against any other person, and whether in criminal or disciplinary proceedings, is proof beyond reasonable doubt.

Recording of the outcome of complaints

349. A point made by Amnesty International, both in their published report and in one of their letters to us, is that complaints are classified in the Chief Constable's annual reports to the Police Authority as being either the subject of criminal or disciplinary proceedings against a police officer or as being "unsubstantiated". In Amnesty's view, the classification of all complaints in which proceedings are not taken as "unsubstantiated" obscures the true position, because there will be cases where ill-treatment is found to have taken place but in which there is insufficient evidence to mount a prosecution against an individual.

350. There certainly have been at least two cases in which police officers **have** been prosecuted, and in which the court has stated that ill-treatment has occurred, but in which no conviction has resulted because it has not been possible to bring the offence home to particular individuals. As we have suggested in Chapter 8, a similar deduction may also be drawn from the outcome of some civil proceedings. Beyond that, it is difficult to go, for in the last resort "found to have taken place" can only sensibly mean "found by a court to have taken place". It is not our impression that the Director of Public Prosecutions or the Senior Deputy Chief Constable or the Police Complaints Board is, in any appreciable number of cases, reaching a definite conclusion adverse to police officers without mounting proceedings accordingly, or that it would be proper for them to do. "Unsubstantiated", therefore, must continue to be read as a term embracing a range of circumstances.

Proposals for alternative complaints procedures

351. Can a more effective procedure for investigating complaints be found? This question was much debated, throughout the United Kingdom, when police complaints boards were being introduced. It is often alleged that, because the police investigator is not independent, he may not be as assiduous in dealing with members of the same force as he ought to be. As we have

seen in Chapter 16, the officers investigating complaints from terrorist suspects in Northern Ireland are all in a separate unit—the Complaints and Discipline Branch—but to this point the objection is made that the R.U.C. has a strong corporate spirit with strong corporate links.

352. It is also significant that, in Northern Ireland, the evidence sought to be obtained by the investigating officer about the complaint is also used, in cases where there is likely to be a dispute about the admissibility of a statement, for the purpose of considering the presentation of the Crown case in the prosecution of the complainant. It may be said that the investigation of a complaint will consciously or unconsciously be influenced by the wish to support the Crown case against the complainant.

353. Finally, some even of those observers who accept that investigations of complaints are in fact carried out objectively and assiduously nevertheless make the point that “justice must not only be done, but must also be seen to be done”, and express doubts as to whether any system of investigation by police officers alone can meet this requirement.

Proposals for independent investigators

354. The remedy commonly advanced to meet these points is that a corps of independent investigators should be set up, responsible to the Police Authority, the Director of Public Prosecutions or some other independent authority. For example the Alliance Party, in their evidence to us, have renewed the submission which they made to the working party (often known as the Black Committee) which was set up in January 1974 to examine arrangements for the investigation of complaints³⁸. In that submission they suggested that the existing procedures were unsatisfactory, not only because complaints against police officers were investigated by police officers, but also because the power to appoint members to a tribunal to enquire into a complaint lay with the Police Authority, who (it is implied) could not properly be seen as independent of the R.U.C. They proposed that a permanent Complaints Investigatory Tribunal should be set up, of which the chairman would be a barrister or solicitor and the other two members would be police officers from Great Britain. The Tribunal would have a staff of investigatory officers who would themselves investigate complaints, with the assistance as necessary of a senior officer of the R.U.C.

355. In the event, the changes which followed on the Black Committee's report were of a different character. A Police Complaints Board for Northern Ireland was introduced in order to provide a fresh independent element *ex post facto*, but no fresh provision was made for the actual investigation of complaints. The working party took the view that this must remain in the hands of the police.

356. We have ourselves come to the same view, although we see this question as turning not so much on questions of principle, as the Black Committee

³⁸ See *The handling of complaints against the police, Report of the Working Party for Northern Ireland*, Cmnd. 6475, May 1976. The Alliance Party's submission was printed as Appendix 10 to that report.

regarded it, as on the practical advantages to be gained or lost. It is to be noted that proposals such as those made by the Alliance Party commonly envisage the employment, as investigators, of police officers or retired police officers from other forces, and it is not obvious what advantage this offers beyond relieving the R.U.C. of a drain on its strength of senior officers. In our view, whoever was selected for the investigatory staff, there would be considerable difficulty in recruiting suitably qualified persons who would nevertheless be able to preserve their independence of the police in the long term. More significantly, the proposal bears only to a very limited extent on the general difficulties which we have ourselves identified as being responsible for such lack of success as the complaints procedure may have. We see no reason to believe that an independent investigator would achieve more fruitful results than are presently achieved. On the contrary, if the crux of the problem is that the police officers against whom complaints are made simply deny the allegations when questioned by the investigating officer, this would be even more likely to be true if the investigation were conducted by persons outside the police service.

Investigating officers from outside the R.U.C.

357. Although we have come to the conclusion that investigations into complaints should continue to be carried out by police officers, we nevertheless believe that considerable advantages would be achieved by the appointment, to a very much greater extent than has been the case, of investigating officers from other police forces in the United Kingdom. This would not remove the suspicions of those who believe that police officers are incapable of investigating each other's activities objectively, but it would go some way towards a more independent investigation. We also believe that the senior officers of the R.U.C. would be assisted by having fresh views brought to bear from investigating officers who, while familiar with the general requirements and constraints of police work, would not be immersed in the Northern Ireland scene. There are too many complaints from persons who have undergone interrogation to allow for the appointment of an investigating officer from outside in every instance; but **we recommend that, in the case of every such complaint which has caused public disquiet, or where there is an allegation of serious assault and medical evidence consistent with the complaint³⁹, or where the Chief Constable has any other grounds for special disquiet or concern, he should request the chief officer of another police force in the United Kingdom to make available a senior officer to investigate the complaint⁴⁰.** We also express the hope that chief officers in Great Britain, despite the heavy burden which the investigation of complaints in their own forces already throws on them, will respond sympathetically to such requests.

³⁹ We recognize that the medical evidence may not be available until after an investigating officer from the R.U.C. has been appointed. In these circumstances, our recommendation is that he should immediately bring the report to the notice of the Senior Deputy Chief Constable, who should then relieve him of the remaining stages of the investigation and arrange for the appointment in his place of an officer from another force. Similar circumstances may also arise in relation to our recommendations concerning disquiet on the part of the public or of the Chief Constable, since this too may not arise until after the investigation has begun.

⁴⁰ There appears to be no specific power in the Police Act (Northern Ireland) 1970, as there is for England and Wales in section 49 of the Police Act 1964, enabling this to be done; but Regulation 6(2)(a) of the Royal Ulster Constabulary (Discipline and Disciplinary Appeals) Regulations 1977 contemplates that the investigating officer may be a member of another force.

Investigating officers' reports

358. It is important that reports by investigating officers should be objective. Some of the reports that we have seen appear to us to go beyond the immediate facts of the case, and to incorporate an assumption that a complaint by a suspect terrorist is unlikely to be genuine. A certain amount of information directly relating to the general credibility of the complainant will, of course, be helpful to the Senior Deputy Chief Constable and to the Director of Public Prosecutions and the Police Complaints Board, but if the true position in a case is that the evidence simply does not reveal whether the complaint is justified or not, it is important in our view that that position should be objectively stated.

Relationship of investigations to trials

359. As we have seen both in Chapter 15 and in Chapter 16, when a complaint is from a person against whom criminal proceedings are pending, it is always investigated, on an interim basis, before the trial of the complainant. In these circumstances the suspicion to which we have referred above in paragraph 352—that the investigation will be coloured by a wish to support the Crown case against the complainant—acquires extra force. It is therefore worthwhile to consider whether the Northern Ireland procedure should be changed and brought into line with practice in England and Wales.

360. A difficulty facing us is that the decision that complaints should be investigated before the complainants are tried has not been taken for the sake of improving the efficiency of the complaints procedures in themselves, but is a by-product of the exercise by the Director of Public Prosecutions of his powers in relation to criminal proceedings, which, as such, are outside our terms of reference. The Director's request for evidence regarding the facts of the complainant's treatment and the complaint or allegation, and in particular his suggestion that the accused person should be invited to provide a detailed statement of his evidence in support of his complaint or allegation, in effect obliges the Chief Constable to commence the formal investigation of a complaint under the Police Act, since this is the only basis which his officers can have for an approach to the complainant at this stage.

361. We can understand the advantages from the Director's point of view of being informed as fully as possible on all evidence relevant to the issue of the admissibility of a statement before making his decision as to prosecution; indeed the procedure, if successful, amounts to obtaining a preview of part at least of the accused person's defence. There is also a practical advantage, up to a point, in the investigating officer getting statements from witnesses before their memories fade. But we have to consider whether it is right in principle for the complaints procedure to be used for a purpose for which it was not intended. As a practical matter, it has also to be observed that very often the attempt to obtain a detailed statement from the accused person fails, because he is advised by his solicitor not to reveal his defence in this way. The complainant and his solicitor are also likely to take more time to consider whether and in what terms to furnish a statement than if the investigation took place after the trial, and this too slows down the investigation process; and the investigating officer has in any event to go back and re-interview the complainant.

362. **The present practice raises a serious issue concerning public confidence in the complaints procedure which should be further examined.** We cannot make a conclusive recommendation on this matter, because it is not within our terms of reference to advise on how the Director of Public Prosecution should exercise his powers in relation to criminal proceedings. Given the nature of his requests at present, we do not see how the R.U.C. can effectively escape from investigating complaints before the complainants are tried.

Disciplinary proceedings

363. It seems to us desirable that vigorous use should be made of disciplinary proceedings in appropriate cases. The fact that none have arisen in recent years from complaints about the conduct of police in the course of interrogation is remarkable, and calls for explanation. The explanation appears to lie in two separate but related factors: the first is the rule against "double jeopardy" and the second is the scarcity of specific disciplinary offences, and indeed of specific orders and regulations, concerning interrogation.

"Double jeopardy"

364. As noted in Chapter 15, both the law, and customary practice developed over the years, operate to restrict the discretion of deputy chief constables in bringing disciplinary charges against members of their forces in cases which have also been considered with a view to a possible criminal charge. As we have seen, the Police (Northern Ireland) Order 1977 provides that where a police officer has been convicted or acquitted of a criminal offence he shall not be liable to be charged with any offence against discipline which is in substance the same as the offence of which he has been convicted or acquitted (save that conviction of a criminal offence is itself a distinct disciplinary offence). "Acquitted" means, of course, acquitted by a court but, in the application of the "double jeopardy" rule, "acquitted" has also (throughout the United Kingdom) been taken to refer to some degree to decisions by the Director of Public Prosecutions that there should be no prosecution. Guidance in general terms about the circumstances in which, a case having already been considered by the Director, disciplinary proceedings should or should not be brought is contained in the Home Office circular about the complaints procedure. This circular, as we have seen in Chapter 15, is adopted as a model by the R.U.C.; and the Police Complaints Board, for their part, are required by the Police Order to have regard to it in considering whether disciplinary proceedings should be brought. The circular recommends that, in a case where the Director has decided against prosecution, "there should normally be no disciplinary proceedings if the **evidence** (our emphasis) required to substantiate a disciplinary charge is the same as that required to substantiate the criminal charge". This advice is based on the ground that it would not be proper to have recourse to disciplinary proceedings simply because it was thought impossible to establish a criminal charge to the satisfaction of a court of law. On the other hand, however, the circular points to cases in which, in addition to the circumstances pointing to a criminal offence, there are other elements which involve a breach or breaches of discipline, and in these cases it is stated that there is no reason why disciplinary proceedings should not be brought. In the context with which we are concerned, such a case might be one in which the evidence was insufficient to justify a criminal or

disciplinary charge of assault but in which there was evidence to demonstrate disobedience to orders in other respects. The circular also points out that the Director of Public Prosecutions may decide against prosecution on grounds related to the public interest—for example, if the alleged criminal offence is trivial—rather than on evidential grounds; and in such cases it is stated that it would be entirely proper to deal with the misconduct as a matter of internal discipline. This section of the circular concludes with the following advice:

“It must not be assumed that when the Director has decided not to institute criminal proceedings this must automatically mean that there should be no disciplinary proceedings.”

365. This is a conclusion which we fully endorse. The task of applying the general guidance in the Home Office circular to particular cases is one which all chief officers of police find difficult; but the fact that no disciplinary proceedings at all have been brought in respect of matters concerning interrogation in Northern Ireland in recent years (when weighed against the volume and nature of complaints), and the Police Complaints Board’s evidence to us concerning the approach adopted by the R.U.C., tend to suggest that an assumption of the kind which the Home Office circular warns against—i.e. that consideration by the Director automatically rules out disciplinary proceedings—is being made. We therefore recommend, firstly, that **the Senior Deputy Chief Constable should, even in cases which have been sent to the Director of Public Prosecutions, consider with particular care whether there are grounds for a disciplinary charge.** But such a recommendation alone is not enough, because some modifications of practice are in our view necessary in Northern Ireland if the provision for bringing disciplinary charges in the absence of, or in addition to, criminal charges is to be successfully applied.

Disciplinary offences relating to interrogation

366. Principally, there must be something to charge the officer with. Broadly speaking the police discipline code in Northern Ireland, as in England and Wales, contains only two offences which are relevant to our field of inquiry. The first of these is the offence of abuse of authority, which includes the use of any unnecessary violence towards a prisoner and being uncivil to a member of the public. The use of unnecessary violence is also, of course, a criminal offence. The second relevant disciplinary offence is disobedience to orders. As we have seen in Chapters 6 and 10, the R.U.C. Code contains few orders which are specifically relevant to the conduct of interrogation. In recommending in Chapter 10 that a code of conduct and practice for interrogation should be drawn up and incorporated in the R.U.C. Code, we have had it in mind that this should make it easier to draw up disciplinary charges in suitable cases.

Grounds for distinguishing disciplinary from criminal proceedings

367. The other factor which complicates the task of the authorities responsible for bringing disciplinary charges, in cases where “double jeopardy” is an issue, is that they may not know precisely what consideration has, in fact, been given to criminal charges. The Home Office circular suggests circumstances in which disciplinary proceedings can be brought without breaching

the principle of double jeopardy, but the examples given in the circular presuppose a knowledge of the alleged offences to which the Director of Public Prosecutions has given consideration and of the reasons why he has decided not to proceed. We revert to this question in the next chapter where we consider the role of the Director in relation to the complaints procedure.

Timing of decisions on disciplinary proceedings

368. It is implicit in our recommendation in paragraph 365 that the Senior Deputy Chief Constable should not reach a decision with regard to disciplinary proceedings before the Director has concluded his consideration of criminal proceedings, nor before a full and final statement has been obtained from the complainant. The Police Complaints Board, in its evidence to us, informed us that it had seen some 30 instances in which the file had been marked with a decision that no disciplinary proceedings should be taken before this stage was reached.

Information to the complainant

369. A standard procedure is prescribed by law⁴¹ for keeping the Police Complaints Board informed as to the stage reached in dealing with each complaint. We think that, where there is a delay, the complainant should also be informed at stated intervals of the stage that his complaint has reached and of any particular reason for the delay. **We recommend that such notification should be sent after three months, and every three months thereafter until the final decision by the Police Complaints Board as to disciplinary proceedings, by the authority with whom the complaint then rests.** In the case of letters sent to complainants by the R.U.C., **we recommend that these letters should be signed personally by the Senior Deputy Chief Constable**, as being the officer charged with the duty of making decisions about disciplinary proceedings.

⁴¹ See Article 5(4) of *The Police (Northern Ireland) Order 1977*, and Article 5(1) of the *Royal Ulster Constabulary (Complaints) Regulations 1977*.

CHAPTER 18

THE ROLE OF THE INDEPENDENT AUTHORITIES IN THE COMPLAINTS SYSTEM

370. We have outlined, in Chapter 15, the parts which the law relating to the investigation of complaints allots to the Director of Public Prosecutions, the Police Authority and the Police Complaints Board. In this chapter we consider how they each carry out their powers and duties in relation to complaints, and some of their difficulties. It is an important feature of the present situation that both the Police Authority and the Police Complaints Board are, in various ways, dissatisfied with the way in which the complaints procedure is operating. As representatives of the public they are naturally concerned about the treatment of complaints made by the public, and anxious to play an effective part themselves in the public interest, and to this end each seeks an extension or confirmation of its powers. Although we have concluded in the last chapter that there would be no greater fairness or effectiveness to be gained from involving agencies other than the police in the actual investigation of complaints, the independent agencies have an important role to play retrospectively, in representing the public interest in the fairness and effectiveness of the system. It is clear that Parliament intended them to play such a part, although the precise boundaries within which they were intended to operate are not always clear.

The role of the Director of Public Prosecutions

371. The function of the Director of Public Prosecutions in the case of a complaint against the police is to consider whether any police officer should be prosecuted for a criminal offence. This is, of course, the same function as the Director exercises in relation to any other allegation of criminal conduct. It is important to recognize that his functions do not extend (either in law or in practice) to other matters. He does not, for example, exercise any general supervisory role in matters concerning police discipline or interrogation. The Director informed us that in exercising his discretion in deciding whether or not to prosecute an officer in respect of matters complained of by a prisoner he applied no special principles but, as in every other case, sought to assess whether the evidence was such as to give reasonable prospects of obtaining a conviction. He does not apply special standards as a means either of exempting police officers from prosecution or of acting with especial severity towards them as a matter of public policy. The Director told us of the difficulty he found in some cases in putting a credible and co-operative complainant before the court as a witness, in finding medical corroboration of the complaint, and in obtaining evidence sufficiently identifying the officers responsible for ill-treatment.

Further independent consideration of prosecutions

372. Although we have recommended against the investigation of complaints by persons other than police officers, our analysis in the previous chapter of the operation of the complaints procedure leaves open the question whether some independent person other than the Director should be made responsible for deciding whether police officers should be prosecuted or perhaps for advising the Director on this question. If such an office were created, it would

also be natural to consider whether that person should also be given a wider role in directing and supervising investigations than the Director presently exercises. The Director himself, in his evidence to us, pointed to an awkwardness in the fact that he is required to consider the prosecution of suspected terrorists on the evidence of C.I.D. officers, and at the same time to consider the prosecution of those C.I.D. officers on the evidence of those terrorist suspects. He pointed also to the large proportion of the time of his department which is taken up by the consideration of complaints against the police, and placed before us the proposition that one possibility for consideration would be the appointment of a further independent officer to direct the investigation of complaints before the papers were sent to him.

373. Our view is that it would be impracticable and confusing to have two separate officers responsible for considering prosecutions. Such an arrangement might tend to bring about two separate standards for prosecution, one for ordinary members of the public and one especially for police officers. In our view the approach adopted at present by the Director—that the same principles should be applied to the prosecution of police officers as to the prosecution of other members of the public—is the only proper one, and no advantage is to be gained by appointing a person other than the Director to decide or advise on prosecutions of police officers. As to whether another person independent of the police should direct the actual investigation—a role that is not filled at present—we take the view on the basis of the files that we have seen that it is reasonably self-evident whether the proper enquiries have been made, and that insofar as there is an issue here it concerns the **manner** in which, for example, questions are put to detective officers by the officers investigating complaints. In the last resort, no-one but the investigating officer himself can determine this.

Cases which should be reported to the Director

374. As we have seen in Chapter 15, the current practice is that all allegations of criminal offences by police officers must be and are sent to the Director for consideration. Although formally this practice goes further than the requirements of the Police Act, there is not a great deal of difference in practical terms because it would be difficult for the Chief Constable ever to be “satisfied”, in a case where criminal conduct was alleged, that it had not in fact occurred. We understand that some chief officers of police in England and Wales, who operate a provision identical to that in the Northern Ireland Police Act, send virtually every allegation of a criminal offence by a police officer to the Director in England.

375. In a special report which they have recently sent to the Secretary of State, the Police Complaints Board imply that the practice of sending all allegations of criminal conduct to the Director is, because of the operation of the “double jeopardy” rule, unduly restrictive of their power to consider disciplinary proceedings. The Board have further suggested to us that some reports are being sent to the Director which do not disclose a possible criminal offence at all, or at least where the conduct alleged should not on a sensible view be regarded as criminal. We understand that the Board have therefore discussed with the Director whether his requirement that all allegations of criminal conduct be sent to him should be varied.

376. It appears to us that the Board's proposal to this effect is not a true remedy for their difficulties, nor desirable in itself. Assuming that the most that the Board would suggest is a reversion to the position in the Police Act, it is to be noted that the difference between that position and present requirements is a difference concerning the weight of the evidence, and not one concerning the nature of the conduct alleged in the complaint. So far at least as complaints concerning interrogation are concerned, we would not ourselves wish to see the police pruning out cases on evidential grounds. It would be an anomaly if the police were able to decide on prosecution when the allegation was against themselves while they are unable to decide on the prosecution of ordinary members of the public. **We believe that all allegations of criminal conduct, including summary offences, should continue to be sent by the R.U.C. to the Director,** so that he may continue to give independent consideration to prosecution in those cases.

Effect of consideration by the Director on disciplinary proceedings

377. Nevertheless the general fact has to be faced that the consideration of cases by the Director, although confined to the limited issue of prosecution, has consequences in the field of disciplinary proceedings. What is primarily at issue here is "double jeopardy", to which we have already given some consideration. In their special report the Board have made the very reasonable point, which we ourselves have echoed in the previous chapter of this report, that disciplinary aspects of a complaint should not simply be assumed to have been included (in substance) within the Director's consideration of criminal aspects. Simply because the Director has decided against prosecution on a set of papers as a whole, it should not necessarily be concluded that there is no scope for disciplinary proceedings.

378. The problem which the Senior Deputy Chief Constable and the Complaints Board have is how to institute effective disciplinary proceedings, while avoiding charging an officer on evidence which the Director has rejected as insufficient to support a criminal charge. We agree with the Board that the danger of "double jeopardy" cannot be avoided unless it is known what criminal charge the Director has considered and whether he has taken his decision on evidential or other grounds. Normally, the Director simply marks the file "no prosecution". He has indicated to the Board that he is willing, if a case occurs in which he can discern no possible criminal offence, to indicate that fact, rather than simply writing "no prosecution". Such a change of practice would not, however, assist in cases where there is a possible criminal offence but may also be a distinct or related disciplinary offence. The Director does not at present indicate what possible offences he has considered; and, while he may indicate the reasons for his decision whether to prosecute or not to the police, he has told us that he is not willing to see the reasons communicated to the Board or to any other authority.

379. In England and Wales the Director of Public Prosecutions, like his counterpart in Northern Ireland, does not normally tell complainants in any degree of detail why he has decided for or against prosecution. But, where the decision is against prosecution, he normally communicates this decision to the complainant in terms which make it clear whether the case is one

in which the evidence is insufficient to justify criminal proceedings or one in which criminal proceedings are not necessary in the public interest. In England and Wales the Director's letters to complainants also specify the possible offences for which prosecution has been considered. Copies of those letters are included in the files which go to the Complaints Board. **We recommend that the Director of Public Prosecutions in Northern Ireland should adopt the same practice.** This implies, of course, that the Director rather than the police should inform the complainant of the conclusion that he has reached. If it is right that the Director in England should do this, when his function is generally speaking an advisory one only, then it is clearly right in Northern Ireland where the actual decision is the Director's. It will be recalled that, in the previous chapter, we have recommended that the complainant should be informed after three months, and every three months thereafter, of the progress of his complaint by the authority with whom the file rests at the time. This should include the Director, who should give reasons in general terms for any delay in considering the case. The Director's letters should be copied to the Senior Deputy Chief Constable and by him to the Police Complaints Board.

380. We understand also that the Director in England and Wales sometimes indicates to the chief officer of police, in some cases where his opinion is that criminal proceedings should not be brought, that the case appears to be an especially suitable one for the consideration of disciplinary proceedings. Such advice goes helpfully beyond the Director's strict statutory functions. **We think that such a practice would be helpful in Northern Ireland, and recommend that it should be introduced.** The Senior Deputy Chief Constable and the Police Complaints Board should not, of course, conclude that the absence of a recommendation by the Director is a reason against disciplinary proceedings. The responsibility is theirs.

Reasons for decisions by the Director

381. A difficulty felt by the Police Authority, as well as by the Police Complaints Board, is that they are generally unable to discover the reasons for delay in the consideration of complaints or the reasons for decisions by the Director on whether to prosecute. As previously stated, the Director is at present unwilling to disclose his reasons for prosecution decisions to anyone other than the police. He has also told us that it is not his practice to disclose reasons for delay. If the independence of the Director is to be sustained, it is clearly necessary that he should not appear to be taking his decisions in concert with anyone else, or to be subject to pressure; but it is our view that this requirement need not preclude, but is fully compatible with, giving information in suitable terms to responsible public authorities. The recommendation that we have already made will, if implemented, go a long way towards meeting their concern (if the Director discloses his reasoning in broad terms to the complainant and to the Board, there would be no point in denying it to the Police Authority). In addition, however, if there continue to be cases in which the Complaints Board or Police Authority are at a loss to understand why no prosecution has been brought, or what event the Director is awaiting before reaching his decision, **we recommend that the Director should give fuller explanations to those authorities.** This clearly need

not and should not extend to going over the evidence minutely with them, nor to giving further information about every case; but it should be possible for them, in cases which are of particular concern, to discover in broad outline, and on a basis of confidentiality, what the factors are which have led the Director to his decision. We understand that the Director of Public Prosecutions in England and Wales occasionally volunteers a fuller than normal explanation for the benefit of the Police Complaints Board—for example, in a case where there is apparently a number of independent witnesses to an assault in the street by a police officer but the Director has felt bound to conclude that they are not reliable witnesses.

Delays in the consideration of complaints

382. As previously recorded, investigating officers are speedily appointed and begin and complete their enquiries, subject to the volume of work in hand, with reasonable expedition. Nevertheless, years can elapse in some cases between a complaint and its final disposal. The evidence that we have received suggests that, in cases where the delay is extreme, the biggest part of it occurs in the office of the Director. Some of the complaints files that we have seen show that the Director's decision was given and notified within a few days of his receipt of the file. Others show much longer delay. In some of these, the reason is to be found in the fact that the Director often judges that a decision on the prosecution of a police officer should await a decision by a court on the charges against a complainant, or even the outcome of other criminal proceedings which may illustrate the credibility of a witness who might also be a witness in relation to the complaint. If either of these courses is followed, the delay in the prosecution and trial processes generally—including any appeal—influences the length of time taken to decide on the complaint. In other instances we have not sought explanations of the apparent delays, having regard to the volume of work in the Director's office.

383. The decision to await court proceedings is one which the Director is fully entitled to take, and in these cases we can discern no remedy for the delay between the complaint being made and its final disposal. The change which we have suggested in the previous chapter might be made—delaying the appointment of an investigating officer until after the trial of the complainant—would not reduce this delay as such, but it would mean that the investigation process itself, including the Director's decision, would be considerably speeded up, and the reason for the delay in beginning and concluding the investigation would be obvious to all concerned. Otherwise we can only suggest again that, where a delay is inevitable, the reason should be fully explained to the Police Authority and Police Complaints Board.

The role of the Police Authority

384. We have already recited, in Chapter 15, those provisions of the Police Act (Northern Ireland) 1970 which define the spheres of responsibility of the Police Authority and the Chief Constable respectively. The boundary between them is not further defined and has been the subject of disagreement. The Police Authority for Northern Ireland has been in existence only for a relatively short while and has felt some frustration in its endeavours to establish its position and carry conviction with the community at large. So far

as our field of inquiry is concerned, the disagreement between the Authority and the Chief Constable revolves principally around section 12 of the Act, which lays on the Authority a duty "to keep themselves informed as to the manner in which complaints against members of the police force are dealt with" by the Chief Constable. This is the same phrase as is used in the Police Act 1964 in relation to police authorities in England and Wales; and there, as in Northern Ireland, there has been disagreement about its scope.

385. The Police Authority for Northern Ireland has established a Complaints and Publicity Committee to discharge its functions in relation to complaints, in recognition of the fact that a smaller body is better suited to dealing with difficult and confidential matters. The principal source of information available to the Committee is the central register of complaints kept by the Complaints and Discipline Branch of the R.U.C. This shows a synopsis of each complaint, the stage which the investigation has reached and what decisions and consequential actions, if any, have been taken. The Committee is also given statistical information about the volume and nature of complaints and how they have been dealt with. The Senior Deputy Chief Constable and supporting officers of the R.U.C. attend meetings of the Committee and, within certain limits, answer enquiries.

386. The Authority take the view that more than this is required if they are satisfactorily to discharge their duty under section 12. They believe that the section necessarily involves and authorises the furnishing to them of information about investigations still in progress, so that they may satisfy themselves on such questions as whether statements have been taken from particular witnesses and on the state of the evidence generally. They believe that they have a right to inspect the full complaints file, and that this right should be confirmed. The Chief Constable, like most other chief constables in the United Kingdom, takes a different view. He believes that the Authority's duty under section 12 is to inform themselves generally about the procedures followed in the investigation of complaints, and to satisfy themselves that these procedures are being followed, but not to get involved in the detail of individual cases or to seek to interfere in the actual investigation, which he regards as an operational matter exclusively within his control. Although the Senior Deputy Chief Constable may answer enquiries from the Authority by reference to individual complaints files, the files themselves are not placed at the disposal of the Authority.

387. The principal ground on which the Chief Constable bases his objections to showing files to the Authority is that, once the investigation of a complaint has begun, the matter is "*sub judice*". This is not, strictly speaking, accurate. Nevertheless, in the words of the Home Office circular about complaints procedures, "it is a principle of long standing and of universal application that the reports of investigations should not be published. The maintenance of the principle that police reports are confidential is in the interests of ensuring full and frank communication between police officers themselves, between chief officers of police and the Secretary of State and, under the new arrangements, between the police and the Complaints Board". It is doubtful whether communication to the Police Authority on a confidential basis would amount to publication, but it is to be noted that police authorities

are not mentioned as possible recipients of reports in this section of the circular. Elsewhere, the circular lays stress on the principle, endorsed by the report of the Royal Commission on the Police in 1962 which inspired the Police Act in England and Wales, that police authorities should not be involved in the handling of individual cases. The circular stops conclusively short of recommending, as a general matter, that reports should be shown to police authorities, but recommends that chief officers should be ready at their discretion to make available to police authorities on request information about such matters as the background to a case which has aroused local concern.

388. The role of police authorities in relation to complaints, throughout the United Kingdom, was much discussed when the proposals were introduced which led to the establishment of police complaints boards in 1977. Police authorities submitted that there was no need for the introduction of a fresh independent element, or alternatively that they themselves should provide that element in an expanded way. This view was, however, rejected by Parliament. In Northern Ireland, the Police Authority asked the Black Committee⁴² to confirm its right of access to individual files, but the working party felt unable to make a recommendation.

389. We appreciate the difficulty facing the Police Authority in representing the public interest, especially in those cases that have become matters of great public concern. One example of such cases is where there is inordinate delay in completing the investigation and processing of a complaint against the police. If members of the Authority are to keep themselves informed as to the manner in which complaints are dealt with it is unsatisfactory, when there is a case causing great public concern, to be told simply that the matter is "*sub judice*" or that the file rests with the Director of Public Prosecutions. Some of the concern caused by such cases will be alleviated if (as we have recommended in Chapter 17) the Director or the police—depending on who has the file—informs the complainant every three months of the progress of his case and the reason for any delay. **The Police Authority, too, should be told by the Senior Deputy Chief Constable of the reason for any delay, and his account should incorporate any explanation given by the Director** (see paragraph 381 above). In this way the Authority should be able to satisfy themselves that steps have been taken to deal with the complaint with reasonable expedition.

390. As regards the content and substance of investigation reports, we endorse the principle that the investigation of complaints is an operational matter and as such is the responsibility of the Chief Constable. Members of the Authority should not act on a representative basis in relation to individual complaints. Nor should they have unrestricted access to complaint files. We reach this conclusion for two reasons. Firstly, in the conditions prevailing in Northern Ireland there are good grounds for reserving to the Chief Constable the decision whether any fact or document should be disclosed except where the law specifically requires it. Secondly, the duty to inspect complaints files has been given by law to the Police Complaints Board and not to the Police Authority. Nevertheless, the right to be informed as to the manner

⁴² See paragraph 354 above.

in which complaints are dealt with, if it is to mean anything, must clearly extend to information about individual cases. Our recommendation is that, **after the investigation is complete, and decisions have been taken about prosecution and disciplinary proceedings, the Authority should be able in cases that particularly concern them to obtain sufficient information to ensure that all relevant sources of information have been tapped.** Thus, in an interrogation case, they should be told at least in broad terms of the sources and nature of any medical evidence, whether from doctors employed by the Authority or from other doctors; of any forensic or technical evidence; and in general terms about the number and duties of and information given by the police officers or other witnesses who have been interviewed. This is not an exhaustive list, and our recommendation is necessarily less precise than we would wish, but we cite these examples as the basis for drawing up a better relationship between the Authority and the Chief Constable in relation to complaints.

391. Generally speaking, we would see such an arrangement working on the basis of agreement and through discussion. It is, however, open to the Authority under section 15(2) of the Police Act to call for a report in writing from the Chief Constable on any matter that they may specify. We see no reason why the investigation of a complaint should not be such a matter. The Chief Constable may, if it appears to him that such a report would contain information which ought not to be disclosed, or is not needed for the discharge of the functions of the Police Authority, "appeal" against such a requirement to the Secretary of State. **We recommend, however, that the Secretary of State should decline to confirm a request by the Police Authority only for the most compelling and specific reasons.** Even if such reasons were present, we would expect that some adjustment to the matters specified by the Authority, rather than complete rejection of their request, would be the appropriate outcome.

Power of the Police Authority to require a tribunal

392. As we have mentioned in Chapter 15, the Police Authority for Northern Ireland, unlike police authorities in England and Wales, has power under section 13(2) of the Police Act to require the Chief Constable to refer a complaint to a tribunal. The Act does not specify in any detail the relationship between such a tribunal and the normal investigation of a complaint. In their evidence to the Black Committee⁴³, however, the Authority expressed the view that the setting up of a tribunal would be improper in any case in which the normal procedures of investigation were appropriate. In discussion with us, the Authority pointed out that the Act did not furnish the tribunal with any specific powers. The Authority also explained that, bearing in mind that such a tribunal would normally sit in public, a sense of responsibility had so far prevented them from requiring one to be set up. Since the members of the Authority gave evidence to us, however, the Authority has required the Chief Constable to refer a complaint to a tribunal.

393. Notwithstanding the Police Authority's reservations, their power to require a tribunal to be set up is a considerable one. The statutory precondition for its exercise (see section 13(2) of the Police Act) is that a complaint should relate "to a matter affecting or appearing to affect the public interest".

⁴³ See above, paragraphs 354 and 388.

We would ourselves regard a complaint of serious ill-treatment by a prisoner, which was supported by medical evidence and about which there was widespread public concern, as falling within this definition; but clearly the sensible way in which to apply this section of the Act is not to require a tribunal to be set up in every such case, thus supplanting the normal processes of investigation and consideration for prosecution, but to exercise a discretion. The decision lies with the Police Authority, who have themselves viewed their power to require a tribunal to be set up as the ultimate action open to them in a case where they are not satisfied about, or have insufficient information about, the normal investigation of a complaint. We think that the power is best regarded in this way and **we would wish to encourage the Authority to make appropriate use of its power, if necessary, on this basis. If experience shows that such a tribunal needs powers to compel the attendance of witnesses or the production of documents, we recommend that such provision should be made.**

Action by the Police Authority consequent upon complaints

394. The Police Authority have made us aware of the extreme concern which they have felt in the past over the nature and volume of complaints of ill-treatment in custody and about the apparent lack of result of the complaints procedures. They are particularly concerned about the nature of the representations made to them by the medical officers whom they employ, the recurrence of those representations in the Spring of 1978, and the possibility of renewal of such representations in future. Their own representations to the Chief Constable, and to the Secretary of State, brought some changes but little relief to their sense of frustration. Two members of the Authority withdrew from taking any active part in its proceedings.

395. It is clearly unsatisfactory from the point of view of the Police Authority that, while they may discern matters about which they are concerned, they are not in a position to require the Chief Constable to amend the procedures and practices of his force. Yet this is clearly the case. Although the Authority is statutorily responsible for maintaining an adequate and efficient police force, and may make representations or recommendations to the Chief Constable, it is clear beyond question that the final responsibility for policy decisions, except in areas where the Authority is more specifically empowered, is his alone. This principle is fundamental to the constitution of police authorities and police forces throughout the United Kingdom, and any amendment to it would need to be made as the result of a thorough re-appraisal and not merely of a review confined to certain limited matters only. The only recommendation that we can make, therefore, is that **the Chief Constable should recognize the Police Authority's commitment to allaying public anxiety, and therefore should pay careful regard to any representation made to him by the Police Authority.**

The role of the Police Complaints Board

396. The Police Complaints Board for Northern Ireland was authorised to begin to perform its main duties on 1 September 1977. As far as interrogation cases are concerned, however, the Board has only fairly recently taken delivery of the reports of investigations into complaints because of

documentary security requirements. The Secretary of State, in his statement on 8 June 1978⁴⁴, indicated that it was within the power of the Board to consider whether any pattern of irregularity existed in relation to such cases and to draw attention to this by means of a special report to the Secretary of State; but the Board has not made any special report on this specific matter. It is therefore too soon for us to draw any general conclusion about the experience or efficacy of the Board in the field with which we are concerned.

397. The Board have, however, made a special report to the Secretary of State on other matters, and have sent us a copy of it; and the contents of that report have been relevant to this Inquiry. The special report by the Board principally concerns the operation of the "double jeopardy" rule in Northern Ireland, on which they had already touched in their Annual Report for 1977. The view expressed in the Board's special report is that the extent of the restriction of the scope of their function, because of the circumstances in which the rule against "double jeopardy" is applied, was not fully appreciated by them at the time of their appointment, and constitutes a serious curtailment of the effectiveness of their role. Earlier in this chapter, in the section dealing with the function of the Director of Public Prosecutions, we have referred to some of the difficulties discerned by the Board in support of their general view—in particular, the lack of information at their disposal about the criminal offences for which the Director has considered prosecutions, and the grounds for his decisions—and to possible ways of overcoming them. We have also referred to the question of whether the investigation of complaints should precede or follow criminal proceedings against the complainant, which is another matter of concern to the Board.

Specific functions of the Board

398. The most obvious function of the Board is to decide, in cases where the Senior Deputy Chief Constable has not preferred a disciplinary charge, whether to recommend or require him to do so, and whether to direct that such a charge should be heard by a disciplinary tribunal, to which the Board would contribute two members, rather than by the Chief Constable alone. As far as we are aware, the Board has not yet exercised any of these powers. The legislation does not circumscribe the Board in its exercise of these powers in any specific way, except that a police officer may not be placed in "double jeopardy" in the strictest sense—that is to say, he may not be charged with a disciplinary offence which is in substance the same as a criminal offence of which he has been convicted or acquitted by a court. As regards the wider aspects of "double jeopardy", there is also a general requirement on the Board to "have regard" to any guidance issued by the Secretary of State; at the moment, the Home Office circular to which we have already referred constitutes such guidance. There is, as we have seen, room for differences of opinion about how the circular should be interpreted with regard to "double jeopardy". The final decision, however, both as to how the Secretary of State's guidance should be interpreted, and even as to whether it should be followed at all, appears to lie with the Board.

399. The Board therefore have the power, in a case where they disagree with the Senior Deputy Chief Constable about whether disciplinary charges

⁴⁴ See paragraph 1.

should be brought, to insist on their own view. The Board have of course, as we have seen, made the point that the information presently available to them does not always enable them to form a satisfactory view, and we have made recommendations designed to help them over this difficulty. In the last resort, however, the Board are not required to refrain from requiring disciplinary charges from being preferred simply because of a general possibility, not adequately demonstrated to them in the particular case, that such action may infringe the wider principle of "double jeopardy". If they recommend disciplinary action in a particular case, it is open to the Senior Deputy Chief Constable to adduce specific information about the consideration already given to criminal charges in order to persuade them to modify their view; if he does not do so, or if the information is unpersuasive, the Board can proceed.

400. It was made clear when police complaints boards were being introduced that the power to direct the preferring of charges was intended very much as a power of last resort, and that agreement should normally be reached by discussion. We defer to that view. Nevertheless we recommend that, **if an appropriate case comes to hand in which agreement cannot be reached, the Board should not hesitate to require charges to be brought.** Moreover, in the case of "exceptional circumstances" such as grave disobedience of orders in relation to the treatment of prisoners, the Board should make use of its power to set up a tribunal.

Information about disciplinary matters other than those mentioned in the complaint

401. As we have mentioned in Chapter 16 (paragraph 330), disciplinary action may be taken by the police themselves, without the Board necessarily knowing about it, in respect of a matter which has come to light through the investigation of a complaint but which was not referred to in the complaint itself. It seems to us that this position is likely to lead to unnecessary frustration on the part of the Board in some instances. If, for example, disciplinary proceedings in respect of the precise matters complained of cannot be mounted because of the "double jeopardy" rule, it may nevertheless be of some satisfaction to the Board to know that at least some kind of disciplinary action is being taken on a matter related to the complaint. **We therefore recommend that the Board should be given information about disciplinary action taken in these circumstances.** We are aware that this recommendation alone leaves open the question whether the Board should have any further standing or function, beyond being merely informed, in relation to such matters. If, for example, it were desired to give them the same function in relation to matters discovered in the investigation of a complaint as in relation to those raised by the complainant (that is, to recommend or require that disciplinary charges should be brought), it would really be necessary to amend the Police (Northern Ireland) Order 1977 accordingly. We do not at present go so far as to recommend this, but suggest that the position be reviewed after experience has been gained of the limited and informal procedure which we have recommended above.

Other requests for information

402. It was clearly envisaged, when police complaints boards were set up, that their functions would be confined to the consideration of disciplinary

proceedings and that they would have no standing as regards criminal proceedings except the power to require relevant information to be brought to the attention of the Director of Public Prosecutions. The Board have, however, made us aware that differences of view, which seem to revolve largely around this question, have arisen between them and the Senior Deputy Chief Constable in respect of requests by them for additional information under Article 6(1) of the 1977 Order. Some of their requests have been resisted on the ground that the complaints in respect of which the requests were made were of a wholly criminal nature and that the Director of Public Prosecutions had been satisfied with the standard of investigation and report. Having regard to the fact that the Director has no responsibility for the standard of an investigation, even as regards criminal matters, it seems to us that this is not a wholly relevant ground for refusal. The point at issue is that the power of the Board under Article 6 of the Order must be exercised for the purpose of discharging its functions with regard to disciplinary charges, and is not available for any other purpose. There is no specific provision in the Order for arbitration in the event of a disagreement, but the Senior Deputy Chief Constable is required to comply with any request for information subject to any regulations made by the Secretary of State. None of the regulations so far made by the Secretary of State bears on this point. It seems to us, therefore, that any requests made by the Board should be met, irrespective of any view which the Director of Public Prosecutions may be said to have formed.

The wider role of the Board

403. In their special report and in their evidence to us, the Board have expressed their functions in relation to complaints in terms which go wider than the strict terms of the Order under which they were set up. For example, the Board consider that they have a responsibility to "monitor" the handling of all complaints, irrespective of whether they have the power actually to intervene in how they are handled, and to satisfy themselves as to the adequacy of investigations and as to the reasonableness of disposals. Some responsibility of this kind seems clearly to be implied by the inclusion in the Order of the power to make special reports. It is perhaps too soon to judge how far the Board's present approach is productive and how far it should be carried. As a general matter, however, we are satisfied that they have the task of reinforcing public confidence in the procedures for dealing with complaints against the police. As far as interrogation cases are concerned we express the hope that when the Board has acquired greater experience of them, and if grave or exceptional matters come to notice which cannot be dealt with by the exercise of the Board's specific powers, they will use their power to make a special report to the Secretary of State about such matters. A copy of any such report must be sent to the Police Authority, who do not have access to the same information as the Board, and this is a useful way of sharing experience with them and of course with the Chief Constable. Examples of matters on which we think the Board might usefully make a special report might be an inexplicably high incidence of complaints about interrogation from a particular police office or station, or aspects of police practice and procedures which seem to the Board to require amendment if future complaints are to be avoided or made more easily capable of resolution.

PART VI

SUMMARY

CHAPTER 19

SUMMARY OF PRINCIPAL CONCLUSIONS AND
RECOMMENDATIONS

404. In this final chapter we bring together in summary form the most important, as we see them, of the conclusions and recommendations at which we have arrived in previous chapters. References in brackets in the summary below are to paragraphs in those chapters.

- (1) We have proceeded to our conclusions and recommendations on the basis that the essential features of the existing system of criminal investigation and trial will continue for the immediate future (paragraph 3).
- (2) There is a co-ordinated and extensive campaign to discredit the R.U.C. This campaign is liable to be strengthened by any misconduct on the part of a member of the force (paragraphs 19 and 20).
- (3) No other police force in the United Kingdom is called on to deal with so much violent crime in such unpromising circumstances as the R.U.C. (paragraph 24). The normal methods of detection of crime are hampered by special difficulties in Northern Ireland (paragraphs 25–28). Hence, there is reliance on interrogation leading to admissions in many cases (paragraph 29), but admissions and confessions are also a common feature of the prosecution case in England and Wales (paragraphs 30 and 32).
- (4) The essential feature of interrogation, whether in Northern Ireland or elsewhere, is that questioning of the suspect by police officers takes place in private (paragraph 33). There is a number of good reasons why suspects will confess to crime in the right atmosphere (paragraphs 34–37). But privacy also creates the opportunity for unfair and violent means and methods to be used (paragraph 42).
- (5) The arrangements for interrogation by the C.I.D. are broadly similar to those in England and Wales (paragraph 43), but in Northern Ireland a majority of persons arrested for questioning are taken to one of two “police offices” (paragraphs 46 and 47). The accommodation at the police offices is superior to that in many other police stations (paragraph 49).
- (6) Because of the volume of violent crime in Northern Ireland, interrogation is mostly conducted by sergeants and constables (paragraph 56). The arrangements for the selection and training of C.I.D. officers are the same as in England and Wales (paragraphs 57–59).
- (7) Police officers are restrained from ill-treatment both by the criminal and civil law and by detailed regulations and instructions (paragraphs 62 and 63). Indirectly, the law relating to the admissibility of statements in evidence also has that effect (paragraph 64).

- (8) Although the older powers of arrest remain available to the police, these are supplemented by the Northern Ireland (Emergency Provisions) Act 1978—which specifies “scheduled offences”—and by the Prevention of Terrorism (Temporary Provisions) Act 1976 (paragraphs 65, 66 and 67). Arrest under these Acts does not depend on the commission of any specific offence, and arrest under the Emergency Provisions Act arises on the subjective judgement of a police officer (paragraph 66).
- (9) Suspects are under no general legal duty to answer questions put to them by the police (paragraph 72). If a prisoner does make a statement, it may by statute be admitted in evidence provided the Crown show, if necessary, that torture or inhuman or degrading treatment was not used to induce it (paragraph 73). The overall burden of proof in this regard remains with the prosecution (paragraph 78).
- (10) The judges in Northern Ireland have retained, and used, their discretion to exclude evidence on grounds other than those set out in statute (paragraphs 80–84). But the reports of cases decided by the judges necessarily leave areas of uncertainty from the point of view of police practice and procedure (paragraph 84).
- (11) The Judges’ Rules were introduced in their 1964 version in Northern Ireland in 1976. As in England and Wales, however, the Judges’ Rules are not rules of law (paragraph 76), and how they are to be applied to the questioning of persons arrested under the emergency legislation is not always entirely clear (paragraph 85).
- (12) The treatment of prisoners in custody for interrogation is prescribed in considerable detail in the R.U.C. Code (paragraphs 86–122, *passim*), but there is no body of provisions applying specially to interviewing officers (paragraph 99).
- (13) Solicitors are not in practice admitted to see terrorist suspects before they are charged (paragraph 123).
- (14) Medical examinations are offered to terrorist suspects when taken into custody and before discharge (paragraphs 136 and 137), and there is further provision for intermediate examinations. Examinations on the prisoner’s own behalf, by his registered practitioner or that practitioner’s partner, are also allowed (paragraph 147).
- (15) There is a need for continuing vigilance regarding the interrogation of prisoners following the judgement of the European Court of Human Rights (paragraph 154). In a number of civil claims against the R.U.C., damages have been awarded or settlements made out of court (paragraph 155). Criminal proceedings have been undertaken against police officers, but no final conviction has resulted (paragraph 157).
- (16) Medical officers, in 1977 and early 1978, made representations about the treatment of prisoners (paragraph 159), and in some of the cases investigated by Amnesty International there was *prima facie* evidence that ill-treatment had taken place (paragraph 160). Our own examination of medical evidence reveals cases in which injuries, whatever their precise cause, were not self-inflicted and were sustained in police custody (paragraph 163).

- (17) It is desirable to ensure where possible that the number of persons arrested is not too great for the available resources of accommodation and staff (paragraph 166).
- (18) It is not practicable at the moment to interrogate all prisoners in the locality where they live (paragraph 168). All accommodation in police stations used for interrogation should be reviewed (paragraph 170).
- (19) The siting of accommodation for supervising officers should be reviewed (paragraph 170).
- (20) We hope that, in due course, more experienced and senior officers will be able to interview prisoners (paragraph 172).
- (21) A training programme for interrogation should be devised for detectives (paragraph 175).
- (22) Detective officers should rotate between interrogation and more general detective duties (paragraph 176).
- (23) Female suspects should be interviewed by women officers (paragraph 177).
- (24) Interviews should not last longer than the interval between normal meal-times, or extend over meal-breaks, or continue after midnight except for urgent operational reasons. Not more than two officers at a time, or six in all, should interview one prisoner (paragraph 181). Officers should identify themselves by name or number (paragraph 182).
- (25) A code of conduct should be drawn up for interviewing officers, to form a separate section of the R.U.C. Code (paragraph 183).
- (26) The proposal that civilian supervisors should be introduced into police offices and police stations is too uncertain in its effects to be commended as a practical measure at present (paragraph 191).
- (27) The institution of Boards of Visitors for police offices and police stations would not have any significant effect on the conduct of interviews (paragraph 193).
- (28) Medical officers should not assume a wider invigilatory role (paragraph 194).
- (29) We hope that experiments in tape-recording interviews will take place soon, but Northern Ireland is not the best place to begin an experiment (paragraph 200). Video-recording is not to be recommended (paragraph 201).
- (30) The present situation calls for senior police officers to exercise their responsibility for the good conduct of interviews, rather than for the supervision of interrogation to be transferred to another body, and for changes in police procedures to allow any misconduct to be detected at once and dealt with without delay (paragraph 202).
- (31) A sound basis for the supervision of interviews is to be found in the fact that complaints are not made against the uniformed branch (paragraphs 205 and 206). Existing supervisory measures in the R.U.C. go further than in any other police force in the United Kingdom (paragraph 210). Nevertheless, further improvements must be considered (paragraph 211).

- (32) Senior detective officers should allot part of each working day to supervision (paragraph 212).
- (33) The number of uniformed supervisory inspectors on duty throughout the day at Castlereagh should be increased, and the supervisory strength at inspector level elsewhere should be reviewed (paragraph 216).
- (34) The responsibility of the inspectors for the welfare of prisoners should plainly extend to periods in an interview room (paragraph 219), and they should if necessary enter the room and stop the interview (paragraph 220).
- (35) Viewing lenses should immediately be installed in all remaining rooms where interviews take place (paragraph 222).
- (36) Closed-circuit television cameras should also be installed in all interview rooms used for interrogation (paragraph 224). The monitor screens should be used by the uniformed supervisory staff on duty, and further monitors should be provided for use by senior uniformed officers (paragraphs 225 and 226).
- (37) It is important that recognition should be given to the special responsibilities that medical officers have by virtue of their membership of the medical profession (paragraph 240).
- (38) Medical officers must have the means to satisfy themselves that prisoners are not being ill-treated (paragraph 240), but should not assume responsibility for monitoring the length of interviews (paragraph 243).
- (39) Medical examination should not necessarily take place after each interview, but the uniformed police staff should ask each prisoner after each interview whether he has any complaint and whether he wishes a medical officer to see him (paragraph 248).
- (40) Medical officers should see all terrorist suspects and persons suspected of scheduled offences during each period of 24 hours and offer them an examination (paragraph 249).
- (41) Medical officers should be aware in every case of each other's findings and opinions (paragraph 251).
- (42) The importance of medical examinations should be impressed upon prisoners both by medical officers and in printed notices (paragraph 262).
- (43) Prisoners wishing to have a private medical examination should continue to be obliged to call first on their registered practitioner or his partner, but further arrangements should be made to enable other doctors to perform such examinations if necessary (paragraph 266).
- (44) Larger notices giving details of rights available to prisoners should be displayed in police offices and police stations, and each prisoner should be given a printed notice to keep for himself. The uniformed staff should have a duty to convey a request for access to a solicitor, where authorised (paragraph 269).
- (45) The consistent refusal to allow access to a solicitor throughout the whole period of detention is unjustifiable (paragraph 276). Without prejudice to their existing rights, prisoners in Northern Ireland should

- be given an unconditional right of access to a solicitor after 48 hours and every 48 hours thereafter (paragraphs 277 and 278). But solicitors should not be permitted to be present at interviews (paragraph 278).
- (46) Attention should be given to how best families can get information about prisoners' whereabouts (paragraph 281).
 - (47) Provision should be made for the attendance of parents at interviews with children and young persons (paragraph 282).
 - (48) There have in recent years been increases in the numbers of complaints against members of the R.U.C., as against members of other police forces, and especially in the number of complaints of assault during interview (paragraphs 311 and 312).
 - (49) No disciplinary proceedings have been brought in recent years in respect of interrogation (paragraph 338). There is disquiet about the effectiveness of the complaints procedure in this regard (paragraph 339).
 - (50) Investigations are conducted promptly and in a painstaking way (paragraph 342). Investigating officers obtain statements from other police officers, but these mostly state simply that nothing untoward occurred or was seen (paragraph 344).
 - (51) Most investigations, like investigations of complaints in other fields, do not lead to a clear-cut result (paragraph 348). This must be understood when reading the statistics (paragraph 350).
 - (52) The introduction of investigators from outside the police service is unlikely to make investigations more effective (paragraph 356), but much more use should be made of officers from police forces other than the R.U.C. (paragraph 357).
 - (53) The requirement that complaints should be investigated before the trial of the complainants involves repeated interviews and delay in the investigation, and should be further examined (paragraph 362).
 - (54) It should not be assumed that consideration of criminal proceedings must automatically rule out disciplinary proceedings (paragraph 365). The proposed code of conduct for interviewing officers should assist the formulation of disciplinary charges in suitable cases (paragraph 366).
 - (55) Complainants should be notified every three months of the progress of their complaint by the authority with whom it rests (paragraph 369).
 - (56) Responsibility for considering the prosecution of police officers should remain with the Director of Public Prosecutions (paragraph 373), who should continue to receive all cases in which criminal conduct by a member of the R.U.C. is alleged (paragraph 376).
 - (57) The Director of Public Prosecutions should specify to complainants the possible criminal offences for which prosecution has been considered, and indicate whether his decision has been reached on evidential or other grounds and any reason for delay (paragraph 379).
 - (58) The Director should inform the Chief Constable of cases which he considers especially suitable for the consideration of disciplinary proceedings (paragraph 380).

- (59) The Director should, on enquiry, give the Police Authority and Police Complaints Board an explanation of the delay in his consideration of a complaint and of his reasons for deciding against prosecution (paragraph 381).
- (60) After the investigation of a complaint is complete (including decisions about criminal and disciplinary proceedings), the Police Authority should be able to obtain sufficient information to ensure that all relevant sources of information have been tapped (paragraph 390). If the Chief Constable refers a request for information by the Authority to the Secretary of State, the Secretary of State should decline to confirm it only for the most compelling and specific reasons (paragraph 391).
- (61) The Police Authority should make appropriate use of its power to require a complaint to be referred to a tribunal. Provision should if necessary be made to afford further powers to such a tribunal (paragraph 393).
- (62) The Chief Constable should recognize the Police Authority's commitment to allaying public anxiety, and pay careful regard to any representation made to him by the Police Authority (paragraph 395).
- (63) The Police Complaints Board have expressed the view that the "double jeopardy" rule seriously curtails their effectiveness (paragraph 397), but the final decision on how the rule should be applied in a particular case normally rests with them (paragraph 399). If they cannot reach agreement with the Senior Deputy Chief Constable, they should require him to prefer disciplinary charges (paragraph 400).
- (64) The Police Complaints Board should be informed of all disciplinary action arising from the investigation of complaints (paragraph 401), and their requests for information should be met (paragraph 402).

APPENDIX 1

Persons arrested under the Northern Ireland (Emergency Provisions) Acts 1973 and 1978 and under the Prevention of Terrorism (Temporary Provisions) Act 1976 and detained for more than 4 hours between 1 September, 1977 and 31 August, 1978.

1	2	3	4	5
<i>Police office or police station</i>	<i>No. of persons detained under the Emergency Provisions Acts</i>	<i>No. of persons detained under the Prevention of Terrorism Act</i>	<i>No. of persons in cols. 2 and 3 who were charged</i>	<i>No. of persons charged as percentage of those detained</i>
Castlereagh	1478	141	601	37
Gough	371	4	103	27
Donegall Pass	4	—	2	50
Musgrave Street	6	—	5	83
Tennent Street	18	—	16	89
Newtownabbey	5	1	4	67
North Queen Street	18	—	6	33
Park Road	2	—	2	100
Mountpottinger	2	—	2	100
Dunmurry	67	—	39	58
Lisburn Road	13	—	8	61
Bangor	10	—	4	40
Downpatrick	20	—	17	85
Newtownards	7	—	6	86
Bessbrook	9	1	2	20
Newcastle	4	—	1	25
Newry	34	—	28	82
Banbridge	6	—	5	83
Lurgan	93	—	29	31
Portadown	39	—	4	10
Armagh	8	2	2	20
Dungannon	7	—	—	—
Omagh	48	3	8	16
Strand Road	499	3	122	24
Coleraine	5	—	—	—
Limavady	9	—	3	33
Ballymena	12	1	3	23
Larne	10	—	5	50
Antrim	1	—	1	100
Lisburn	9	—	1	11
TOTALS	2814	156	1029	35

Notes

1. The figures do not include persons arrested under section 2 of the Criminal Law Act (Northern Ireland) 1967, or persons arrested under emergency legislation but detained for less than 4 hours. The figures are not, therefore, comparable with those shown in paragraph 44 of the report, even allowing for the difference in the periods covered.

2. The police office at Gough Barracks, Armagh, came into use only in November, 1977. The figures shown in the table for Gough, therefore, are not directly comparable with those shown for other police stations.
3. Some persons arrested are first taken to a local police station and subsequently to another police station or to a police office (see paragraph 47 of the report). Such persons appear in the table only once, against the police office or police station to which they were taken on arrest. The figures for Castlereagh and Gough thus show only prisoners taken there directly, and not the total throughput.
4. Persons arrested and questioned, whether or not transferred to another police station or to a police office for further interrogation, may be so transferred in order to be charged (see paragraph 126 of the report, for example, for the practice relating to Castlereagh). The figures in Column 4 of the table (and consequently also the percentages in Column 5) show such persons against the police office or police station to which they were taken on arrest, and not necessarily against the police office or police station where most of the questioning was conducted or where they were charged.

APPENDIX 2

COMPLAINTS AGAINST MEMBERS OF THE R.U.C.
1975-1978

	1975	1976	1977	1978
Total number of complaints recorded against members of the R.U.C.	1366*	1834*	2007*	2331
Total number of complaints recorded alleging assault during interview	180*	384*	671*	327
Total number of complaints recorded alleging irregularity of procedure concerning persons in custody, other than assault	not available	109	39	239
Complaints recorded involving persons arrested under emergency legislation and alleging assault during interview	..	220	443	266
Complaints recorded involving persons arrested under emergency legislation and alleging irregularity of procedure concerning persons in custody, other than assault	..	127	224	145

Notes

- (1) A communication from a complainant may contain more than one complaint, and a complaint may be made by more than one person. The figures above do not show the number of complainants or the number of communications.
- (2) "Persons arrested under emergency legislation"—i.e. the Northern Ireland (Emergency Provisions) Acts 1973 and 1978 and the Prevention of Terrorism (Temporary Provisions) Act 1976—do not include persons arrested for scheduled offences under section 2 of the Criminal Law Act (Northern Ireland) 1967. The figures shown against this description cannot, therefore, be related precisely to the figures for arrests shown in paragraph 44 of the report.
- (3) Figures marked with an asterisk were shown in the Chief Constable's reports to the Police Authority for 1976 or 1977. The remainder are unpublished figures supplied to the Inquiry by the R.U.C.

APPENDIX D

BACKGROUND INFORMATION ON HUMAN RIGHTS AND EVENTS LEADING TO PRESENT SITUATION IN NORTHERN IRELAND

To provide the Subcommittee delegation with background information pertinent to its inquiry in Ireland, the Congressional Research Service furnished the two reports which are printed here in their entirety.

The first was prepared by Pauline Mian Chakeres, Library of Congress Analyst in Western European Affairs, Foreign Affairs and National Defense Division dated November 1, 1976 entitled "Developments in Northern Ireland 1968-1976."

The second, furnished at the request of the delegation, was prepared by Kersi B. Shroff, Legal Specialist, American-British Law Division, Law Library, Library of Congress in September, 1978 entitled, "Human Rights and the Emergency Laws in Northern Ireland."

While some of the material in the November 1, 1976 report may be out of date and supplanted by other documentation and information contained in this report, it was nonetheless considered that it be included since it does highlight the events commencing in 1968 which have produced the present impasse.

The delegation expresses its appreciation to the Library of Congress for these valuable contributions.

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DEVELOPMENTS IN NORTHERN
IRELAND 1968-1976

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November 1, 1976

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 1968-1976

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DEVELOPMENTS IN NORTHERN IRELAND
1968-1976

I. Introduction.

The chronology in Appendix A covers developments in Northern Ireland (N.I.) since the current troubles began in October 1968 with the civil rights marches until the present time - September 1976.

The emphasis of the chronology is on political developments in Northern Ireland; it tries to incorporate views, actions and reactions of the principal interested parties. Repeated and continuing outbreaks of violence, murders, riots and strikes are recorded only insofar as they have led to political decisions or resulted in changes of policy. It should be borne in mind, however, that almost daily occurrences of murder and bombings form the backdrop to the chronology. Statistics on the toll of violence are to be found in Appendix B.

Finally, this chronology does not dwell on outside reaction to developments in Northern Ireland. U.S. congressional concern over events in the province has often been expressed in the form of resolutions and speeches which - although varying from one another - have urged three major courses of action: 1) that the U.S. use its good offices towards a resolution of the problem; 2) that the U.S. take an initiative to engage the United Nations in Northern Ireland; and 3) that the U.S. support the withdrawal of British troops from N.I. and the reunification of Ireland. Administration response to these calls has been that the U.S. would consider offering its good offices towards finding a solution to the problem if asked to do so by the interested parties, but such had not been the case; that insofar as the U.N. was concerned,

there again, the U.N. could only act if asked to do so by both the British and Irish Governments; and lastly, a solution which involved coercion of Protestant Unionists into a united Ireland would not lead to a lasting peace.^{1/}

II. Highlights of developments.

The civil rights marches of October 1968 led by Catholic demonstrators asking for an end to discrimination in voting, housing, and employment, ensuing clashes with Protestant groups and the handling of these outbreaks by the local police are regarded as the beginning of the current troubles in Northern Ireland.

The "Downing Street Declaration" of August 1969 marked British assumption of responsibility for "law and order" in Northern Ireland. The British Government sent troops to N.I. in increasing numbers, substituting for the local police, who had been severely criticized for their lack of impartiality. In their attempt to provide protection for the Catholic minority, the British lost the confidence of the Protestant Unionist majority, who saw loss of control over the security forces as placing it in jeopardy. The Protestant reaction was to create paramilitary groups of its own.

Internment without trial was introduced in August 1971. Phased out and ended in December 1975 this measure is widely regarded as having alienated the Catholic minority and as having played into the hands

^{1/} See Secretary Rogers' News Conference of February 3. The Department of State Bulletin, vol. LXVI, No. 1704, February 21, 1972, p. 221.

of the Irish Republican Army (IRA).

British political initiatives - prompted by a desire to redress Catholic grievances - led to divisions within the Protestant Unionist majority and the fall of three successive N.I. Prime Ministers: Captain Terence O'Neill, Major Chichester-Clark and Mr. Brian Faulkner. Britain assumed direct rule over the province in March 1972. Elections were held in June 1973 for a Northern Ireland Assembly, whose mandate was to draft a new constitution for the province. The guidelines for the drafters of the constitution were embodied in the "Sunningdale Agreement" of December 1973, which stipulated the need for a power-sharing executive and a recognition, in the form of a Council of Ireland, of the "Irish Dimension" of the Northern Ireland problem.

Mr. Brian Faulkner assumed leadership of the new power-sharing executive in January 1974, under the Northern Ireland Constitution Act 1973. The experiment ended - and the province reverted to direct rule once more - in May 1974 with the resignation of the Faulkner government following a massive strike by Protestant workers opposed to the Sunningdale Agreement.

Another attempt at finding a constitutional framework for the province based on the principle of power-sharing between the Protestant and Catholic communities was made in May 1975 when elections were held for a Constitutional Convention. The failure of the Protestant majority to agree to a power-sharing formula was reported

by then Secretary of State for N.I. Merlyn Rees in March 1976. Mr. Rees also stated that no new political initiatives were in the offing and that direct rule from Westminster would continue indefinitely.

Sources: Deadline Data, Facts on File, Keesings' Contemporary Archives, and Deutsch, Richard and Vivien Magowan; Northern Ireland 1968 - 1974, A Chronology of Events. 3 vols. Belfast, Blackstaff Press.

III. Political divisions in Northern Ireland.

Several remarks of a general nature can be made regarding political affiliations and parties in Northern Ireland.

1) The political allegiance of the Protestant and Catholic communities follows sectarian lines. Protestant parties address themselves first and foremost to the maintenance of Protestant ascendancy in the province. Threats to this ascendancy are perceived to be the Irish Republic and the Catholic Church. In turn, Catholic parties have dedicated themselves to the goal of a 32-county Ireland. Parties attempting to transcend sectarian lines have been few in number, membership and influence.

2) Traditional parties have not withstood the strains brought on by the current "troubles". Protestants are now divided between those who favor power-sharing with Catholics - a minority - and those who wish to maintain Protestant ascendancy. The latter are divided over the best way to maintain ascendancy: by a return to home rule, independence, or integration with the U.K. The Catholics are presently divided between those who retain re-unification as the first priority and those who advocate protection, equality, and justice for the Catholic minority within Northern Ireland first, and place re-unification a distant second.

3) Most parties in Northern Ireland have strong links with paramilitary groups - either legal or illegal - which enable them to back up their positions with threats but which also limit their political

maneuverability as the paramilitary groups gain in importance.

Protestant groups.

The Ulster Unionist Party. The Ulster Unionist Party was formed in 1892 to oppose British acceptance of Irish Home Rule, and its party platform since that time has consisted of maintaining Protestant ascendancy. From the creation of Northern Ireland in 1921 until the assumption of direct rule by Westminster in 1972, the Unionist Party ruled uninterruptedly, with the leader of the Party assuming the office of prime minister of Northern Ireland as well. The Unionist Party maintained close ties with the British Conservative Party.

The Unionist Party was not able to survive the strains of the 1968 civil rights demonstrations, the IRA campaign, and the demands made upon it by the British Government to move toward reforms which would have met some Catholic demands but which would have diluted Protestant ascendancy. Three successive Unionist prime ministers, Captain Terence O'Neill, Major Chichester-Clark and Mr. Brian Faulkner fell from power, victims of Protestant intransigence and backlash.

The Unionist Party has splintered into four parties:

The Official Unionist Party, currently led by Mr. John Taylor, claims to be the direct heir of the old Unionist Party. It has opposed the concept of a power-sharing executive and the establishment of a Council of Ireland, policies advocated by Westminster, but would like to maintain ties with the British Government under some form of home rule. The Official Unionist Party won 21 seats in the N.I. Constitutional Convention elections of May 1975.

The Democratic Unionist Party, (DUP), is led by the Reverend Ian Paisley, a "fundamentalist" Presbyterian with his own church. The DUP is populist in tone, expressing concern over such issues as housing and unemployment, but the Reverend Paisley is most vocal in his denunciations of Roman Catholicism and "popery" and views power-sharing with Catholics as merely the first step of a take-over of the province by Rome. Paisley is held by many observers as the politician most responsible for the failure of the N.I. Constitution to reach an agreement on power-sharing. The most he would grant Catholics in a future government was the chairmanship of a few backbench committees. Paisley has advocated integration with Britain as a safeguard against incorporation in the Republic of Ireland. The DUP won eight seats in the elections for the N.I. Assembly in June 1973 and 12 seats in the elections held for the N.I. Constitutional Convention in 1975.

The Vanguard Unionist Party was created in 1973 under the leadership of Mr. William Craig who, as Home Secretary in N.I. in 1968 and 1969, took a hard line on civil rights demonstrators. His party won 7 seats in the June 1973 N.I. Assembly elections and 14 in the N.I. Constitutional Convention elections of May 1975. The Vanguard Unionist Party strongly supported the Ulster Workers' Council's call for a general strike in 1974 to sabotage the Sunningdale Agreement. Mr. Craig has advocated independence for the province as preferable to a power-sharing formula, but his position has evolved on the subject. During the Northern Ireland Convention talks in 1975, Mr. Craig favored an agreement on voluntary power-sharing (as opposed to compulsory power-sharing written into a

constitution) as a temporary solution, and for this stand was expelled from the United Ulster Union Coalition (UUUC).

The three above-mentioned parties formed the United Ulster Union Coalition, under the leadership of Mr. Harry West, to fight the elections for the N.I. Constitutional Convention in 1975, on a united platform - opposition to power-sharing with the Catholic minority. The UUUC won 54.7% of the popular vote and 47 of the 78 seats and was able to make its views prevail. The UUUC is currently suffering from dissension, however. Not only was Mr. Craig, leader of the Vanguard Party, expelled from the UUUC, but there are reportedly current disagreements between the followers of Reverend Paisley, the DUP leader, and the supporters of the Official Unionist leader Mr. John Taylor on the degree to which and the form in which opposition to direct rule from Westminster should take.

The Unionist Party of Northern Ireland, UPNI, was founded by Mr. Brian Faulkner after his ouster as Official Unionist leader in 1974. The UPNI has emphasized the importance of maintaining N.I. as part of the U.K., but has differed from the other Protestant parties in its willingness to develop institutions consistent with Westminster policies. The UPNI acceptance of the principle of power-sharing has led to defeat at the polls. Mr. Faulkner's wing of the party won 29% of the popular vote and 22 seats in the N.I. Assembly June 1973 elections, but fell to 7.7% of the popular vote and 5 seats in the May 1975 N.I. Constitutional Convention elections.

Paramilitary groups.

The press has reported identifying over 40 Protestant paramilitary groups. Their description is made difficult given their shadowy, temporary, secret, or illegal nature, but they range from community defense organizations, of a vigilante nature, numbering a few men and women - armed or unarmed - bent on patrolling their own neighborhoods, to gangs composed mainly of criminal elements who engage in armed robbery and murder for purely criminal ends, without sectarian or political concerns.

The most important Protestant paramilitary groups from a political and numerical point of view are the Ulster Defense Association (UDA), which is linked to the Vanguard Unionist Party, and the Ulster Volunteer Force (UVF), with which the UDA is presently feuding.

Mr. Andy Tyrrie, leader of the UDA, and one of the leaders of the 1974 industrial strike, announced in May 1975 the creation of a single loyalist army under a joint command, the Ulster Army Council (UAC). The UAC regroups six paramilitary organizations: the UDA, the Orange Volunteers, the Ulster Special Constabulary Association, Down Orange Welfare, the Red Hand Commandos - considered one of the most ruthless and violent groups - and the Ulster Volunteer Service Corps. Mr. Tyrrie claims 20,000 fully armed and trained men at his command.

Mr. Tyrrie has often stated that independence might be the best solution for Northern Ireland. In his view Northern Ireland could stand on its own economically. He backed Mr. Craig's appeal for voluntary power-sharing during the N.I. Constitutional Convention talks, and has

expressed disappointment with the politicians' failure to fill the present political vacuum.

Catholic groups.

From 1921 to 1968, the Catholic community was represented by the Nationalist Party and the Republican Clubs (Sinn Fein), whose sole goal was re-unification with the Republic of Ireland. Shunning active participation in the Stormont government (the Sinn Fein was barred from active politics as an illegal organization, for the most part) they exerted little influence over N.I. politics. The Nationalist Party still commands very little influence or power, winning only 2.5% of the popular vote to the 1975 N.I. Constitutional Convention elections, and no seats.

The Northern Ireland Civil Rights Association (NICRA). The Northern Ireland Civil Rights Association is not a political party per se, but deserves mention as a movement for its departure from previous Catholic attitudes and behavior, and for launching the 1968 civil rights campaign. NICRA did not abandon the hope of a united Ireland, but accepted the de facto partition of Ireland, and sought to achieve immediate goals for the Catholic minority within Northern Ireland such as an end to discrimination in housing, voting and employment.

The Social Democratic and Labour Party (SDLP) was founded in 1970 by a group of civil rights activists who wanted to carry the campaign for reforms into the political arena. Its leader is Mr. Gerry Fitt. The SDLP has accepted the premises of the NICRA, namely that a united

Ireland remains an ultimate goal, but that immediate goals concern constitutional guarantees and equal opportunities for the Catholic community in Northern Ireland. It has sought to put itself in the mainstream of the European Social Democratic tradition with its emphasis on social and economic programs to improve the lot of the working classes. It speaks overwhelmingly to the Catholic community, however, in its staunch advocacy of a power-sharing executive as the best means of securing Catholic rights and a recognition of the Irish dimension of the N.I. problem. But it has separated itself from traditional Nationalists and Republicans with its endorsement of re-uniting Ireland by peaceful means only; in other words, with the consent of the majority. The SDLP won 19 seats to the 1973 N.I. Assembly and 17 seats (23.7%) of the vote to the N.I. Constitutional Convention in 1975.

Paramilitary groups.

Paramilitary groups on the Catholic side are considered to be fewer in number than those on the Protestant side, primarily because they are overwhelmingly dominated by the Irish Republican Army, the military arm of the Sinn Fein.

The IRA became active in Northern Ireland once again with the outbreak of violence from clashes among civil rights marchers, Protestants and the police in 1968 and 1969. The IRA rapidly split on questions of strategy. At the 1969 annual conference, militant IRA members attacked their leaders for being too soft and formed the Provisional Wing of the IRA. The argument began over military tactics, but ideological

differences have since appeared. The Official IRA has paid more attention to theory and considers itself Marxist. It has advocated channeling its influence into the political arena. In May 1972, the Official IRA issued a truce statement calling for an end to military action by all sides, but reserving for itself the right to use force to defend itself. The Provisional wing of the IRA has given less thought to the political and social structure of a united Ireland - although it has recently called for a federal, socialist state - and has concentrated on uniting Ireland first, and political matters second. The Provisional wing of the IRA believes that the only way to unite Ireland is militarily.

Both wings of the IRA agree about several basic aims: a declaration of intent by the British to withdraw their troops from Northern Ireland, the legalization of Republican activity in N.I., and the establishment of a 32-county Ireland. They also reject the claim by the Irish government in Dublin to be the legitimate government of Ireland, since it has accepted the de facto partition of the island. The Official wing of the IRA is said to number several hundred, while the Provisional wing is said to number 1,500 men.

A further split occurred in the IRA in December 1974 with the creation of the Irish Republican Socialist Party (IRSP). A breakaway group from the Official IRA, it claims to be more socialist and more militant. Its most prominent supporter is Bernadette Devlin McAliskey. Its "protector group" is called the People's Liberation Army and is regarded as the most leftwing of the paramilitary groups. The IRSP is said to number about 700 members.

Nonsectarian parties.

Two parties have attempted to cross sectarian lines, but to date have not acquired a firm footing in either Protestant or Catholic communities.

The Alliance Party, founded in 1970, endorses union with Britain as in the best interests of all Ulstermen. Within a British framework, it has supported the concept of power-sharing and has stressed the importance of impartial law-enforcement and justice. Its emphasis has been on anti-discrimination policies rather than on social and economic programs. The Alliance Party won eight seats to the 1973 Assembly, which it retained in the 1975 N.I. Constitutional Convention with 9.8% of the vote.

The Northern Ireland Labour Party (NILP) claims to be the N.I. wing of the British Labour Party. For a long time it remained neutral on the question of whether Northern Ireland should become a part of the United Kingdom or a part of the Irish Republic. In recent times, however, it has lost much of its Catholic support to the SDLP, and despite its shift to a more "Loyalist" stance, has lost Protestant support to more intransigent parties. It won 1 seat to the 1973 N.I. Assembly and 1 seat to the 1975 Constitutional Convention, with 1.4% of the vote.

IV. Future options in N.I.

British policy towards Northern Ireland has been guided by a commitment to reframe a system of government which would accommodate both Protestant and Catholic aspirations and a commitment to adhere to the wishes of the majority, democratically expressed, concerning the future status of the province. However, British policy has reached an impasse. The Catholic community stands firm for a power-sharing executive and a recognition of Northern Ireland's "Irish dimension" and the Protestant community stands equally firmly for majority rule based on party government, collective cabinet responsibility and rejection of any links with the Irish Republic.

The deadlock between the opposing communities has been recognized by the British Government. In March 1976, then British Secretary of State for N.I. Merlyn Rees announced that no new political initiatives would be forthcoming for some time and that direct rule from Westminster would continue indefinitely.

Neither the British Government, the Protestant community, nor the Catholic community are happy with the continuation of direct rule. The resulting political vacuum in the province makes the curbing of violence and the restoration of "law and order" that much more difficult. Yet despite the general dissatisfaction with the present state of affairs, no alternative has been put forth which, in the eyes of the concerned parties, would offer a practical and equitable solution to the current troubles.

Withdrawal of British troops from Northern Ireland . No one, not even the IRA, has called for an immediate withdrawal of British troops from Northern Ireland. Most observers seem to think that an immediate withdrawal would precipitate a bloodbath in the province, at the expense of the Catholic community. The IRA and other groups have called for a withdrawal of British troops to their barracks and a declaration of intent to withdraw from the province at a certain date. Advocates of a phased troop withdrawal suggest that the British presence has only served to underwrite the position of the Protestant majority and that faced with the prospect of a troop withdrawal, Protestants would soften their intransigence and seek a compromise solution with the Catholic minority. Opponents of a British troop withdrawal claim that such a step would have the reverse effect: far from softening their stance, Protestants would feel threatened and would reinforce their already considerable fighting capability in their determination to defend their "Britishness". The Irish Republic would be called upon to protect the province's Catholic minority. The civil war in the province would thus extend to the island as a whole, a prospect which the Irish Government would not relish.

It is not quite accurate to say that no one had advocated a British troop withdrawal. A weary British public, disgusted with the toll of lives and the expense of maintaining British troops in Northern Ireland, has from time to time expressed itself in public opinion polls and newspaper editorials for a troop withdrawal with a "let the chips fall

where they may" attitude, on the grounds that things might get worse before they get better, but at least it would be a way out of the present deadlock. British policy-makers would view this approach as presenting certain security risks. It is argued that warring factions would turn to hostile governments for their arms supplies. Already funds and weapons have found their way into Northern Ireland from Colonel Quaddafi's Libya and the Soviet Union via Czechoslovakia. The victorious party's indebtedness to such arms suppliers would likely create an uncomfortable neighbor for Britain.

Britain has rejected the suggestion that a U.N. peace-keeping force be brought into the province to replace British troops on the grounds that Northern Ireland is a British province and that the status of the province cannot be changed unless and until the people so decide.

Independence for Northern Ireland. This solution has at times been advocated by Loyalist politicians, most notably in the past by Mr. William Craig. Independence would come about either by a unilateral declaration of independence or by negotiated settlement with Great Britain whereby Northern Ireland would achieve something equivalent to dominion status. The economic viability of an independent Ulster has often been questioned. Advocates of an independent Ulster have asserted variously that Ulster could stand on its two feet economically, that membership in the European Communities (EC) would give it trade outlets and entitle it to EC regional funds, or that it could expect continued British subsidies under dominion status. It is doubtful, however, whether Britain would continue its subsidies to an independent Ulster.

It is also doubtful whether Britain would readily acquiesce in a negotiated independence with Ulster. This would set a bad precedent for other regions in the United Kingdom, most notably Scotland and Wales, and would also offer no guarantees of protection to the Catholic minority in the province. Independence would most likely involve some form of partitioning of the province.

Partition of Ulster. It has been suggested that a redrawing of boundaries could take place, enabling heavily Catholic-populated areas to be incorporated in the Republic of Ireland, and allowing heavily Protestant-populated areas to remain a province with home rule, to become integrated with Britain, or to become independent. This solution also presents some difficulties. It would be easier to redraw boundaries if all the Catholics lived in border areas and all Protestants in northern and eastern areas. Such is not the case, however, and re-partition would involve heavy transfers of populations, some of whom might not wish to move. The Irish Republic might also not look upon such a solution with equanimity. It would be asked to absorb politically turbulent elements and also urban and industrial workers into a predominantly rural economy.

Re-unification of Ireland. Such a solution would not be opposed by the British Government, which has repeatedly stated that it would abide by the wishes of the majority, but it would certainly be objected to by the Protestant majority. Discussion of this alternative has centered on the kind of Ireland which would be palatable to the Protestants.

Advocates of re-unification speak in terms of drawing up a new constitution for the Republic, along federal lines, of enacting legislation which would minimize the role of the Catholic Church in public affairs, of British economic help in bringing the standard of living up to that of Ulster, as ways to make life in the Republic more appealing to the Protestants. It has also been suggested that Britain could use its economic leverage to persuade the Protestants that they should contemplate this possibility. It is acknowledged that this solution would need Protestant acquiescence. No Irish government wants to be saddled with a Protestant minority problem.

Integration with Britain. This course has appeared to many Protestants as the surest way to guarantee their "Britishness" and has been advocated in different forms by such people as the Reverend Ian Paisley and Mr. Enoch Powell. The drawbacks to this solution would also be substantial. From Britain's point of view, it would have permanent minority problem on its hands. From the Catholic minority's and the Irish Government's point of view, protection for the Catholic minority might be better ensured, but the door to future re-unification with the Republic would appear forever closed.

Appendix A. Chronology.

1968

- Oct. 5 -- Violence broke out in Londonderry when police broke up a demonstration organized by the Northern Ireland Civil Rights Association to protest discrimination against Catholics in housing, job-allocations, the restricted franchise and gerrymandering in local government elections.
- Oct. 26 -- A group of civil rights marchers going to Londonderry were attacked by Protestant extremists with sticks. The police failed to prevent the attack.
- Nov. 22 -- The Northern Ireland Government announced a series of important reform proposals dealing with housing allocations, local government franchise, the creation of an ombudsman to investigate citizens' grievances, a review of the Special Powers Act, and the setting up of the Londonderry Development Commission.
- Nov. 30 -- Violence broke out in Armagh between civil rights supporters and Protestants led by the Reverend Ian Paisley, after the local Civil Rights Committee, on police advice, had halted a proposed march through the center of the city.
- Dec. 9 -- In a broadcast to the people of Ulster, Northern Ireland Prime Minister Captain Terence O'Neill appealed to people to accept his policies of reform and said that Britain might intervene if there were a reversal of his policies and Northern Ireland's problems were not resolved.
- Dec. 11 -- Captain Terence O'Neill dismissed his Minister of Home Affairs, Mr. William Craig, who had questioned Britain's right to intervene in the affairs of Northern Ireland under the Government of Ireland Act, 1920. Mr. Craig had also denounced the Civil Rights movement as consisting of ill-informed radicals and Republicans.

1969

- Jan. 4 -- Civil rights marchers carrying banners saying "one man, one vote", were ambushed on their way to Londonderry by militant Protestants who threw heavy stones and sticks studded with nails at them. Demonstrators charged the police with failure to prevent the attack or assist them.
- Jan. 6 -- Prime Minister O'Neill denounced the demonstrators' march as an attempt to bypass and discredit the ordinary processes of government.

- Feb. 24 -- General elections to the Northern Ireland Parliament at Stormont resulted in the return of the Unionist Party with 36 seats out of 52, a majority of 20 over all other parties and groups. The elections were notable for the division within the Unionist Party, between supporters and opponents of Captain O'Neill's leadership.
- Apr. 28 -- Prime Minister O'Neill resigned as leader of the Unionist Party and announced his resignation as Prime Minister to be effective upon the appointment of a new Prime Minister. His downfall was attributed to the issue of universal franchise in local government elections.
- May 1 -- Major James Chichester-Clark was sworn in as Northern Ireland's Prime Minister to succeed Captain O'Neill.
- May 21 -- Northern Ireland Prime Minister Chichester-Clark met in London with British Prime Minister Harold Wilson to discuss the "momentum of social reform in Northern Ireland", security and public order, and prospects for the Northern Ireland economy.
- June 1 -- The Civil Rights Association said it would resume public demonstrations if the Government did not publish a timetable for reforms.
- July 12-13 -- Rioting broke out in the streets of Londonderry following celebrations by the Orange Order on the anniversary of the Battle of the Boyne.
- Aug. 2-4 -- Violent clashes between Roman Catholics and Protestants took place in Belfast.
- Aug. 13 -- Mr. Jack Lynch, Prime Minister of the Irish Republic, called on the British Government to request the United Nations to send a peace-keeping force to Northern Ireland, and to open negotiations with his government to review the existing constitutional status of Ulster. Northern Ireland Prime Minister Chichester-Clark rejected Mr. Lynch's intervention.
- Aug. 14 -- Following several days of fighting British troops entered Londonderry and assumed riot duties for the first time in the history of the Province.
- Aug. 18 -- Mr. Cathal Goulding, chief of staff of the Irish Republican Army. (IRA), announced that the organization had placed all its volunteers on full alert, and had already sent a number of fully equipped units to Northern Ireland.

- Aug. 19 -- The British Government issued a 7-point declaration, called the Downing Street Declaration, setting out its responsibilities in Northern Ireland and welcoming initiatives by the N.I. Government to change the local government franchise and the allocation of houses, to set up machinery to consider citizens' grievances, and to create a parliamentary commissioner for administration. Britain said it would assume full responsibility for security in Northern Ireland, thus putting the Royal Ulster Constabulary and the B Specials, primarily composed of Protestants, under the command of the British army.
- Aug. 20 -- The U.N. Security Council adjourned its consideration of the Irish Republic's request that a UN peace-keeping force be sent to the province.
- Aug. 20 -- The Northern Ireland Civil Rights Association issued a statement demanding the disarming and disbanding of the B Specials.
- Aug. 21 -- The Northern Ireland Government announced the appointment of an advisory body under the chairmanship of Lord Hunt to examine the structure and composition of the Royal Ulster Constabulary (RUC) and B Specials and to make recommendations for changes.
- Aug. 27 -- Both Houses of the Northern Ireland Parliament passed resolutions establishing a Tribunal of Inquiry into the violence and civil disturbances in Ulster under the chairmanship of Mr. Justice Scarman.
- Aug. 27-29 -- British Home Secretary Mr. Callaghan paid a three-day visit to Northern Ireland during which he toured riot-torn areas of Belfast and Londonderry and met with various representatives, politicians and organizations.
- Aug. 29 -- A joint communique was issued by the Home Secretaries of Britain and Northern Ireland setting out the measures being taken by the Northern Ireland Government to speed up the implementation of reforms referred to in the Aug. 19 "Downing Street Declaration". (Five bills embodying the reform program were introduced and passed both houses of Stormont between Sept. 30 and Dec. 18, 1969: A commissioner of complaints bill, two community relations bills, an electoral law bill and a local government bill).
- Sept. 12 -- The findings of the Cameron report, set up on March 3 to inquire into the disturbances from October 1968-April 1969, were published. The report concluded that the grievances of the Civil Rights Association had been justified and recommended remedying them.

- Oct. 10 -- The report of the Advisory Committee on the Police in Northern Ireland, under the chairmanship of Lord Hunt, was published. The Hunt report recommended the phasing out of the B Specials and their replacement by a new 4,000 part-time force under British authority and the relieving the RUC of its military duties.
- Oct. 11-12 --Protestant demonstrators protesting the Hunt report recommendations clashed with British troops in Belfast, leaving 3 killed and 67 injured.
- Nov. 12 -- A bill providing for the formation of the Ulster Defence Regiment (to replace the B Specials), was introduced in the British House of Commons. It received Royal Assent on December 18, and the Ulster Defence Regiment became operational on April 1, 1970.
- Dec. 18 -- In a speech in the Irish Dail, Irish Prime Minister Jack Lynch ruled out the use of force and said his government would rely on attaining unification by peaceful means.
- Dec. 18 -- A Police Bill, implementing proposals for the reorganization of the RUC, including the establishment of a Police Authority and a Police Advisory Board, was introduced in the Northern Ireland House of Commons. It was enacted into law on March 26, 1970.
- Dec. 28 -- It was reported in the Dublin newspaper, the Sunday Press, that some members of an IRA Army Convention had withdrawn earlier in the month to form a Provisional Army Council.

1970

- Feb. 5 -- The Public Order (Amendment) Act was passed by Stormont. The Act made it an offense to take part in an unlawful procession and extended the period of notice for processions from 48 to 72 hours. Trade Union marches were excluded from this requirement. Counter-demonstrations could be banned by the Home Affairs Minister, and obstruction of a lawful procession became an offense. Demonstrations such as sit-downs or sit-ins also became offenses.
- March 31- Apr. 3 -- Rioting broke out in Belfast following a Junior Orange Parade.
- Apr. 16 -- The Rev. Ian Paisley won a seat to Stormont in parliamentary by-elections over the Unionist candidate.
- Apr. 21 -- The formation of the Alliance Party, composed of Catholic and Protestant moderates, was announced. Mr. Oliver Napier, Mr. John Hunter, Mr. Robert Cooper and Mr. David Corkey were named as founder members.

- Apr. 24 -- The Northern Ireland Government's housing reform policy was rejected by 281 votes to 216 at the Unionist Party's annual conference in Belfast. Mr. Brian Faulkner, Minister of Development, said the vote would not change the government's plans.
- June 18 -- Parliamentary elections in Great Britain returned the Conservative Party to power with Edward Heath as Prime Minister. In Northern Ireland the Rev. Ian Paisley won a seat at Westminster.
- June 27-28 -- Violence broke out in Belfast and Londonderry following the imprisonment on June 26 of Miss Bernadette Devlin, sentenced to six months' imprisonment in Dec. 1969 on charges of incitement to riotous behavior.
- July 1 -- The Northern Ireland government passed two bills, one entitled the Criminal Justice (Temporary Provisions) Bill, imposing minimum sentences ranging from one month to 5 years for offenses connected with rioting, looting, bombing, and the other entitled Prevention of Incitement to Religious Hatred Bill, making incitement to hatred an offense. Both bills were opposed by two Protestant Unionist members, Rev. Ian Paisley and Rev. William Beattie.
- July 9 -- The British Army conducted intensive arms searches all over the province, and especially in Belfast.
- Aug. 21 -- The Social Democratic and Labour Party (SDLP) was formed under the leadership of Mr. Gerry Fitt, a Catholic. Mr. Fitt said that the party would be left of center, with eventual reunification of Ireland as a primary goal. He said that Ireland could not be reunited by violence, but would have to involve the consent of the North. In Belfast, Sinn Fein called for a boycott of the new party.
- Oct. 18 -- Mr. Cathal Goulding, Chief of Staff of the IRA, said in a television interview that he did not believe the "establishment" would allow the IRA to attain their objectives without the use of violence and that the only solution to Ireland's troubles was unity under a Marxist Socialist Republic.
- Oct. 22 -- Addressing a special assembly of the United Nations in New York, Mr. Jack Lynch, Prime Minister of the Irish Republic, said he was satisfied with intentions to restore peace and justice in Northern Ireland.

1971

- Jan. 25 -- A demand for the resignation of the Prime Minister, signed by 170 members of the Ulster Unionist Council, was submitted to the Unionist Party Headquarters. Prime Minister Chichester-Clark came under increasing attack from right-wingers in his own party for failure to restore "law and order" and his rejection of the proposal to re-introduce internment without trial.

- March 20 -- Northern Ireland Prime Minister Chichester-Clark resigned his post as Unionist party leader and Prime Minister because he saw 'no other way of bringing home to all concerned the realities of the present constitutional, political and security situation.'
- March 23 -- Mr. Brian Faulkner was elected Prime Minister by the Unionist Parliamentary Party by a 26-4 majority over Mr. William Craig. Mr. Faulkner said his most important single aim would be to restore confidence throughout the entire community.
- April 7 -- Following the protest over searches by security forces in the sealed-off Catholic areas in West Belfast, Mr. Gerry Fitt, leader of the SDLP, warned that 'serious consequences' could ensue if the searches continued exclusively in non-Unionist areas.
- April 14 -- Protestant crowds rioted in Belfast, attacking police and troops, following a machine gun attack on a Protestant youth parade.
- May 12 -- An attempt to introduce a Bill of Rights for Northern Ireland in the House of Commons at Westminster was defeated by 175 votes to 135. The Bill sought to amend the powers of the Parliament and Government of Northern Ireland and made provision for proportional representation in parliamentary and local government elections. It also contained provisions for civil rights for Northern Ireland citizens equal to the civil rights of other UK citizens.
- June 13 -- British troops fought with Orangemen who had broken through a police cordon drawn up to enforce a ban on parades in Dungiven.
- June 19 -- In a speech at Burntollet the Rev. Ian Paisley said that the British Army's job was not to defeat the IRA but to remain in Northern Ireland until there was a political settlement between Dublin and Westminster about the future of Northern Ireland. He called on the Prime Minister to hold a general election and let the people decide the future.
- June 22 -- In a speech celebrating the fiftieth anniversary of the foundation of Stormont, Prime Minister Brian Faulkner outlined new proposals for participation by members of the Opposition in the chairmanship of parliamentary committees to be set up before the end of 1971. The response to these proposals was favorable from members of the opposition and critical from right wing members of the Unionist party.
- June 29 -- Additional British troops were sent to Northern Ireland to support security forces in anticipation of 36 parades planned for the month of July.
- July 8 -- Rioting and disturbances continued in Londonderry for the fourth successive night.

- July 12 -- At a press conference in Londonderry, Mr. John Hume, SDLP MP, said that the SDLP would withdraw from Stormont and would set up their own Assembly unless an immediate and impartial inquiry was made into the shooting of two men by the Army on July 8. Lord Balniel, Minister of State in the Ministry of Defense said that he was satisfied that there had been no misconduct by the troops.
- July 16 -- The SDLP MPs announced that they were setting up their own "non-sectarian" assembly and confirmed that they were boycotting Stormont.
- July 19 -- The Alliance Party criticized the Opposition MPs who had withdrawn from Stormont and called for the setting up of a permanent independent tribunal to investigate matters of serious public interest.
- Aug. 9 -- The Northern Ireland Government under Section 12 of the Special Powers Act introduced internment. Prime Minister Faulkner said that the main object of internment was to smash the IRA. The government also announced a six months ban on parades. During the morning over 300 people were arrested and taken for questioning and possible internment. Following the announcement extensive rioting broke out in Catholic areas of Belfast and spread to other towns.
- Aug. 12 -- Irish Prime Minister Jack Lynch stated that the Stormont government should be abolished and replaced by an administration in which power and decision-making would be equally shared between Unionists and non-Unionists.
- Aug. 15 -- SDLP leader Gerry Fitt announced a campaign of civil disobedience to protest internment.
- Aug. 17 -- At a press conference in Belfast sponsored by the Northern Ireland Civil Rights Association and the Association for Legal Justice allegations were made of ill-treatment of detainees by the security forces. On Aug. 18, Irish Prime Minister Jack Lynch called for an impartial inquiry into the treatment of internees.
- Aug. 31 -- The British Home Office announced that Sir Edmund Compton, the ombudsman for Northern Ireland, would conduct an investigation into allegations of brutality by the Army against detainees.
- Sept. 2 -- Mr. Joseph Cahill, a leader of the Provisional IRA, was banned from entering the United States where he was to raise funds for the IRA. He was held in detention by immigration authorities in New York pending an appeal, and ordered to leave the U.S. on Sept. 8.

- Sept. 5 -- The Provisional IRA put forward 5 peace proposals: an end to the British forces' campaign of violence; the abolition of Stormont; a guarantee of non-interference in the election of a 9 county Parliament; the immediate release of detainees; and compensation for those who had suffered from British violence. If these proposals were not accepted the IRA would intensify its campaign against the British forces.
- Sept. 12 -- Cardinal Conway and 6 Catholic bishops issued a statement telling the IRA they were bringing shame and disgrace on noble and just causes. The statement asked 'who wanted to bomb a million Protestants into a united Ireland?' The bishops asked Protestants to realize that the minority felt deeply about internment and were convinced that allegations of ill-treatment were well founded. They said a radical reform of Parliament was needed.
- Sept. 28 -- After two days of tripartite talks, Prime Ministers Heath, Faulkner and Lynch issued a communique stating that all three agreed on the need to bring an end to violence and internment and other emergency measures in Northern Ireland without delay.
- Oct. 4 -- An International Red Cross team arrived in Belfast to investigate allegations of brutality against those interned without trial.
- Oct. 17 -- The Sunday Times published an article alleging that brain-washing techniques were used on internees in Northern Ireland.
- Oct. 20 -- Senator Edward Kennedy co-sponsored a resolution in the U.S. Congress calling for the immediate withdrawal of British troops from Northern Ireland and the immediate convening of all parties for the purpose of establishing a united Ireland.
- Oct. 26 -- The Stormont government issued a Green paper on the future development of Parliament and the government of Northern Ireland. The paper discussed the problem of broadening the political base of the government and suggested 20 to 30 additional MPs.
- Oct. 27 -- Northern Ireland Prime Minister Brian Faulkner appointed a Catholic, Mr. G.B. Newe, to serve in the Cabinet with the rank of a Minister of State in the Prime Minister's Office. This was the first Catholic appointment to a Northern Ireland Cabinet.
- Nov. 3 -- At Stormont, Prime Minister Faulkner said that the Royal Ulster Constabulary reserve would be armed with the minimum weapons necessary for their defense. On Nov. 12, it was announced that automatic weapons would be issued to the RUC for the protection of RUC stations without sufficient Army guard.

- Nov. 16 -- The report of the Compton Commission on alleged brutality by security forces against internees in Northern Ireland was issued. The report found no evidence of brutality, but did find evidence of ill-treatment, such as deprivation of sleep, the use of continuous noise, posturing against a wall for up to six hours, and a diet of bread and water.
- Nov. 29 -- Following a report by the International Committee of the Red Cross, the Stormont government said it would improve the conditions of men held under the Special Powers Act.
- Nov. 30 -- The Irish Government announced that it intended to place before the European Court of Human Rights at Strasbourg the allegations of brutality by troops in Ulster.

1972

- Jan. 30 -- Violence broke out during a protest rally organized by the Civil Rights Association (NICRA) in Londonderry. The Army opened fire, killing 13 people. The Army said it had opened fire only after paratroopers had been fired on. Local people, civil rights marchers and NICRA leaders said that the Army had not been fired on. The day became known as 'Bloody Sunday'.
- Feb. 1 -- British Prime Minister Heath announced that a tribunal of inquiry would be set up to investigate the shootings at Londonderry under the direction of Lord Chief Justice Widgery.
- Feb. 2 -- Crowds demonstrated in Dublin against the shootings in Londonderry. The British Embassy was burned down as a result of petrol bombs thrown at the building.
- Feb. 7 -- The Irish Government welcomed the offer of the Secretary General of the U.N., Kurt Waldheim, to try to help in the Northern Ireland crisis.
- Feb. 8 -- The British Government turned down Kurt Waldheim's offer of U.N. assistance in Northern Ireland.
- Feb. 9 -- Ulster Vanguard, a political organization, was formally launched in Belfast, under the leadership of William Craig, who described the organization as an umbrella for traditional Unionist groupings with the aim of rallying all loyalists.
- Feb. 19 -- At the annual conference of the Fianna Fail Party in Dublin, Irish Prime Minister Jack Lynch said that prior to reunification he would like to see power in Northern Ireland shared between the two communities.

- Feb. 22 -- The Official IRA claimed responsibility for a massive explosion which took place at Aldershot, near London, in the Officers' Mess of the Parachute Brigade, in which seven people died. This was the first major terrorist act in England.
- Feb. 23 -- As a result of a High Court decision in Belfast ruling that the British Army's activities in dispersing gatherings, entering homes and making arrests without warrants were illegal, a bill entitled the Northern Ireland Act, 1972, was introduced in the British House of Commons to legalize the situation. The Act became law on Feb. 24.
- Feb. 28 -- The Subcommittee on Europe of the House Committee on Foreign Affairs began three days of hearings on the situation in Northern Ireland to determine what the attitude of the United States should be towards the trouble area.
- March 2 -- British Prime Minister Heath announced the findings of the Parker committee investigating interrogation methods used against detainees in Northern Ireland. A majority report by Lord Parker concluded that the methods used could be justified in exceptional circumstances and a minority report by Lord Gardiner stated that such measures were morally unjustifiable. Mr. Heath said that the British Government had decided that the techniques examined by the committee would not be used in the future.
- March 10 -- Headquarters of the Provisional IRA in Dublin announced that they had instructed their members to observe a 72-hour truce to start at midnight. They listed three conditions for the British Government to meet in order to have a lasting peace: the withdrawal of British forces, amnesty for political prisoners, and abolition of Stormont. The Official IRA said there would be no change in their military policy.
- March 13 -- Amnesty International published a report dealing with cases of alleged brutality in the treatment of detainees in Northern Ireland. The report concluded that the "ill-treatment used amounted to brutality" and was in violation of the Declaration of Human Rights.
- March 16 -- Speaking to the Foreign Press Association in London, British Prime Minister Heath defined the two principles his Government was considering for a settlement in Northern Ireland. He said the first principle was that the status of Northern Ireland could not be changed except by consent of the majority. The second principle was that the minority must be assured of a real and meaningful part in decision-making.

- March 18 -- Fourteen prominent Northern Ireland Catholics said in a letter to the London Times that the reform program had not been implemented in community relations, employment, minority participation, the police force and the positions of ombudsman and the commissioner for complaints.
- March 24 -- British Prime Minister Heath announced new initiatives for Northern Ireland and the news that they were unacceptable to the Northern Ireland Government. Mr. Heath's proposals were: 1) periodic plebiscites on the border issue; 2) a gradual phasing out of internment; 3) the transfer of responsibility for law and order to Westminster. Northern Ireland Prime Minister Faulkner and his cabinet submitted their resignation and Prime Minister Heath announced the appointment of William Whitelaw to be Secretary of State for N.I.
- March 27-28 -- A two-day work stoppage called for by Mr. Craig's Ulster Vanguard to protest the British Government's take-over was effectively supported by an estimated 190,000 workers. Many factories, shops and restaurants were closed, public transportation was closed down and electricity output was reduced by two-thirds.
- March 30- At Westminster, the Northern Ireland Temporary Provisions Bill, which formally ended home rule in Northern Ireland, became law.
- April 6 -- The Scarman Tribunal's Report entitled An Inquiry into Violence and Civil Disturbances in Northern Ireland between March and August 1969 found that there had been no plot to overthrow the Stormont government nor any evidence of an armed insurrection but there had been planned acts of violence by extreme groups on both Protestant and Republican sides.
- April 19 -- The Widgery Report, investigating the shooting of civilians by paratroopers on "Bloody Sunday", was published and found that the soldiers only fired only after being subjected to gunfire, which had started with a single shot fired at troops.
- May 29 -- A statement was issued by the Official IRA in Dublin saying that an immediate cessation of hostilities, in accordance with the wish of the people they represented in Northern Ireland, would take place.
- May 30 -- The Provisional IRA stated that it would continue operations and not agree to any truce without acceptance of its demands which included: 1) release of internees; 2) withdrawal of British troops to their barracks; 3) an amnesty for all political prisoners.
- June 22 -- In Dublin, the Provisional IRA issued a statement announcing that it would agree to a ceasefire to go into effect on June 26, 1972, provided that the British Army reciprocated. Secretary of State William Whitelaw stated that the British Army would reciprocate.

- July 9 -- The ceasefire between the Provisional IRA and the British Army collapsed following the British Army's attempt to prevent the installation of Catholic families in houses left vacant by Protestants.
- Sept. 24 -- At a preliminary meeting of the Darlington conference on the future of Northern Ireland, policy statements were issued by the three parties which had agreed to attend. The Unionist Party statement emphasized restoration of peace through the defeat of the IRA and the restoration of Stormont. The Alliance Party and the N.I. Labour Party issued a joint statement calling for a regional assembly, elected by proportional representation, the introduction of a bill of rights for N.I., and the responsibility for security to remain in the hands of the British Government. The SDLP, which refused to participate in the conference as long as internment continued, issued a document calling for joint Irish and British sovereignty over N.I., a national senate consisting of representatives from both the North and the South, and a British declaration of intent on the eventual reunification of Ireland.
- Sept. 26 -- The three parties attending the Darlington conference failed to agree on the form a new assembly for N.I. should take. The Unionist delegation objected to proposals involving proportional representation or multi-member constituencies. It remained firm on the "committee system" as a method for minority participation.
- Oct. 19 -- Mr. William Craig, leader of the Ulster Vanguard, claimed that he could mobilize 80,000 men prepared to shoot to kill should the British Government impose an edict on them.
- Oct. 24 -- In New York, the Irish Minister of Justice Mr. Desmond O'Malley, appealed to Irish Americans not to give money to the Irish Northern Aid Committee since 'much of what is collected gets to the Provisional wing of the IRA.' He said people should make contributions through the churches or the Red Cross.
- Oct. 25 -- The Reverend Ian Paisley stated that if Stormont were not restored Northern Ireland should be fully integrated into the U.K.
- Oct. 30 -- The British Government issued a green paper entitled 'The Future of Northern Ireland' which included proposals put forward by various parties and movements and intended as a discussion paper. The British Government recognized the 'Irish Dimension' of the N.I. problem.

1973

- Jan. 1 -- Great Britain, Denmark and Ireland became members of the European Communities. The Irish Foreign Minister said that cross-border cooperation within the framework of the European Communities could evolve into Irish unity.
- Feb. 7 -- Protestant workers in Northern Ireland staged a one-day strike called by William Craig, to protest the internment without trial of two Protestant workers. A total blackout of electricity occurred and Loyalist organizations picketed police stations. The strike was condemned by Mr. Faulkner, the Rev. Paisley, the Northern Ireland Labour Party and church leaders.
- Feb. 12 -- Mr. William Craig, leader of the Vanguard movement, suggested an independent "Dominion of Ulster", with power-sharing within a majority framework.
- March 3 -- Elections held in the Irish Republic resulted in the victory of the Fine Gael and Labour coalition. Mr. Liam Cosgrave, leader of the Fine Gael, succeeded Mr. Lynch as Prime Minister.
- March 8 -- A referendum on the border issue was held in Northern Ireland. With 41% of the electorate abstaining, results gave 591,820 votes in favor of remaining in the U.K. and 6,463 votes for a united Ireland. (Only about 2% of eligible Catholics voted.)
- March 20 -- The British Government issued a White Paper on N.I., containing its proposals for a N.I. Assembly, to consist of 80 members to be elected by proportional representation and a power-sharing executive. It proposed the continuance of the Office of Secretary of State for N.I., and the retention of control over security matters by Westminster. The paper provided for the setting up of a Council of Ireland for North-South discussion on relevant matters. The White Paper also reaffirmed the British position that Northern Ireland would remain a part of the U.K. as long as that was the wish of the majority of the people.
- Reaction to the White Paper was varied. Mr. Brian Faulkner stated there was much in the paper that could serve as a basis for negotiations. The Rev. Ian Paisley said he was very disappointed with the proposals, and Mr. William Craig called the proposals absurd. The SDLP said it would enter elections for the 80-seat assembly but was disappointed at the lack of definition for the Council of Ireland. The Provisional IRA found the proposals unacceptable and called on the British Government to announce a withdrawal date from N.I. for its forces. In Dublin, Prime Minister Liam Cosgrave said the document contained proposals which could help towards a solution.

- March 27 -- The 900-member council of the Unionist Party voted 348 to 231 against a resolution to reject the British White Paper. The parts considered objectionable by its opponents, led by Mr. William Craig, were those dealing with power-sharing and control of the security forces to remain in the hands of the British Government.
- March 30 -- Mr. William Craig announced the formation of a new political party to be called the Vanguard Unionist Progressive Party, whose aim would be to contest the forthcoming elections and win enough representation to make the White Paper unworkable.
- April 10 -- The Northern Ireland Assembly bill proposing an assembly of 78 members to be elected by proportional representation in 12 constituencies was introduced in the British House of Commons. It became law on May 3, 1973.
- May 15 -- The Northern Ireland Constitution Bill was introduced in the British House of Commons. It officially abolished the Stormont Parliament and the Office of Governor of Northern Ireland. It provided for the devolution of power to a power-sharing Executive and an Assembly when the Secretary of State was satisfied that they were acceptable to the community. The Secretary of State would also have the power to appoint two people to the Executive who were not members of the Assembly.
- May 30 -- Local government elections, the first since 1967, took place in Northern Ireland. There were 1,222 candidates for 526 seats in 26 councils. Results gave the Unionist Party roughly 40% of the seats, the Loyalists supporting Mr. Craig about 13% of the seats, the SDLP 16% of the seats, the Alliance Party 12% of the seats, the rest going to smaller parties and non-party candidates.
- June 28 -- Elections for the N.I. Assembly were held. Results gave:
- | | |
|---|----------|
| Mr. Faulkner's Unionists | 22 seats |
| Unofficial unpledged Unionists | 10 seats |
| Democratic Unionist Party (Paisley) | 8 seats |
| Vanguard Unionist Progressive Party (Craig) | 7 seats |
| Other Loyalists | 3 seats |
| Social and Democratic Labour Party (Mr. Gerry Fitt) | 19 seats |
| Alliance Party | 8 seats |
| Northern Ireland Labour Party | 1 seat |
- July 31 -- Mr. Nat Minford, an Official Unionist, was elected chairman at the first meeting of the Northern Ireland Assembly by 31 votes to 26. Mr. Minford adjourned the meeting after refusing to accept a motion of censure against him submitted by the Rev. Paisley and Mr. Craig.

1973

- Sept. 17 — British Prime Minister Edward Heath and Irish Prime Minister Liam Cosgrave issued a joint communique following talks outside of Dublin in which they affirmed their support for a Council of Ireland.
- Nov. 22 — Secretary of State for N.I. William Whitelaw announced that Mr. Faulkner's Unionist Party, the SDLP and Alliance parties had reached agreement on the distribution of posts in a coalition government. The Executive would consist of 11 members (6 Unionists, 4 SDLP and 1 Alliance). Mr. Brian Faulkner would be chief executive and Mr. Gerry Fitt would be deputy chief executive.
- Dec. 2 — British Prime Minister Edward Heath announced the replacement of William Whitelaw as Secretary of State for N.I. by Mr. Francis Pym. Mr. Pym was sworn into office on Dec. 3.
- Dec. 3 — Unpledged Unionists announced their formation into a new political group, the Ulster Unionist Assembly Party, which would oppose the idea of a Council of Ireland.
- Dec. 9 — Representatives of Ireland, Britain and the new Northern Ireland Government issued a 10-page communique following three days of talks at Sunningdale. The communique outlined points of agreement. The Irish Government stated that it accepted no change in the status of Northern Ireland unless a majority desired it, and the British Government declared that it would support the wishes of the majority. The Council of Ireland, representing the two parts of Ireland, would consist of a 14-member Council of Ministers (7 from each side) with executive functions, and a 60-member consultative assembly (30 from each side chosen by proportional representation) with advisory functions.
- Dec. 13 — The Northern Ireland Constitution (Amendment) Bill was passed in the British House of Commons. It reduced the maximum number of seats in the N.I. Executive to 11, and provided for an administrative body of 15. A devolution order to end direct rule and to devolve power to the N.I. Assembly effective Jan. 1, 1974, was also passed.

1974

- Jan. 7 — Mr. Brian Faulkner, Chief Executive, announced his resignation as leader of the Unionist Party, and said that he would form a new group which would maintain the traditional Unionist link with the British Conservative Party.
- Jan. 22 — The Northern Ireland Assembly met at Stormont for the first time since the Executive was formed. The Assembly was adjourned following disruptions by the Loyalist members.

1974

- Feb. 28 -- General elections for the British House of Commons gave the British Labour Party 301 seats and the Conservatives 296 seats. In Northern Ireland, the Loyalist opposition won 11 seats and the SDLP won one seat.
- March 5 -- Mr. Merlyn Rees was appointed Secretary of State for N.I. by the new Labour Prime Minister Harold Wilson.
- March 12 -- The Vanguard Unionist, Democratic Unionist, and Official Unionist Parties issued a statement in which they announced their rejection of the Sunningdale Agreement for a Council of Ireland, as well as any other proposals which would involve executive or judicial power-sharing with the Republic of Ireland.
- April 4 -- Secretary of State for N.I. Merlyn Rees reaffirmed the Labour Government's support of the Sunningdale Agreement and the Council of Ireland and announced a program for the gradual release of detainees in N.I. before the British House of Commons.
- April 7 -- Mr. Rory O'Brady, President of the Provisional Sinn Fein, said in a television interview that an immediate withdrawal of British forces from N.I. might create a situation similar to that in the Congo when the Belgians pulled out, but that he would like to see a phased and planned withdrawal of British troops.
- April 18 -- A poll conducted for the BBC by NOP Market Research showed that 69% of the people in N.I. favored giving the Executive and the Sunningdale Agreement a chance, 74% were in favor of power-sharing, 41% thought that the Council of Ireland was a good idea in principle, and 80% thought independence outside the U.K. without financial support would be unacceptable.
- April 26 -- At the end of a 3-day conference the Democratic, Official and Vanguard Unionist Parties issued a policy document listing their objectives: 1) a regional parliament in N.I. in a federal United Kingdom; 2) an additional 10 seats for N.I. at Westminster; 3) a Bill of Rights; 4) the reorganization of the Ulster Defense Regiment; 5) the devolution of responsibility for security from Westminster to N.I.; 6) the abolition of the N.I. Executive and the repeal of the N.I. Constitution Act, 1973; 7) a general election to a N.I. Assembly; 8) opposition to the creation of a Council of Ireland.
- May 5 -- Mr. Brian Faulkner's Unionist group announced the forthcoming creation of a new party, dedicated to the support of the Sunningdale Agreement, the Council of Ireland and a power-sharing executive. The Council of Ireland would have no authority in constitutional matters and no legislative authority, but would concern itself with specific economic and social matters and the defeat of terrorism.

1974

- May 14 -- The UWC (Ulster Workers' Council) announced a strike by electricity workers designed to reduce the power supply in Belfast and force the shut down of factories, in response to a vote supporting the Sunningdale Agreement in the N.I. Assembly.
- May 17 -- Following a meeting with Loyalist politicians Willam Craig, Harry West, Rev. Ian Paisley and Rev. William Beattie, Secretary of State for N.I. Merlyn Rees said that he would not negotiate with anyone engaged in a political industrial strike.
- May 19 -- Secretary of State for N.I. Merlyn Rees declared a state of emergency in N.I., designed to protect all essential services, as power supplies dwindled. The UWC stated that they were not impressed by the state of emergency and their position remained unchanged.
- May 21 -- The UUUC (United Ulster Unionist Council) composed of the three Loyalist parties Vanguard, Democratic Unionist, and Official Unionist, asserted their endorsement of the strikers and called on the Executive to resign and asked for new elections to the N.I. Assembly.
- May 21 -- Prime Minister Harold Wilson said that his Government would not be blackmailed into departing from the N.I. Constitution Act, 1973, or from its intention of proceeding with the implementation of the Sunningdale Agreement. He reasserted his Government's refusal to negotiate with the strikers.
- May 22 -- Mr. Brian Faulkner, Chief Executive in Northern Ireland, read a statement agreed upon by the parties composing the executive, which recommended that a Council of Ireland with executive powers and a two-tier parliament not to be put into operation until after the next Assembly elections scheduled for 1977-78. The UWC replied that it was against the Sunningdale Agreement 'whatever modifications it might assume'.
- May 23 -- Mr. Gerry Fitt, leader of the SDLP and the Deputy Chief Executive, called on the British Government to order British troops to take control of the power-stations and the oil depots in order to maintain essential services in the province.
- May 26 -- Mr. John Hume, Minister of Commerce in N.I. and member of the SDLP, stated that his department had drawn up a contingency plan to keep essential services in N.I. operating, but that it would need the backing of the security forces, which were under British control.
- May 27 -- Secretary of State for N.I. Merlyn Rees announced that he had authorized British troops to take control of the distribution of petroleum for essential uses in the Province.

1974

- May 28 -- Mr. Brian Faulkner, N.I. Chief Executive, handed in his resignation along with that of the other Unionist ministers to Mr. Rees, following Mr. Rees' reassertion that he would not negotiate with the UWC.
- May 29 -- The Ulster Workers Council announced that it had achieved part of its aim with the resignation of the executive and that it was calling for a phased return to work. The British Government announced that it was suspending the N.I. Assembly for four months.
- June 4 -- An opinion poll entitled 'A Special Survey of Northern Ireland attitudes' carried out by Opinion Research Centre showed that 74% of Catholics favored power-sharing as compared with 33% of Protestants. A total of 46% were in favor. On the future role of British troops 43% said they should stay indefinitely, 35% wanted a gradual withdrawal, and 21% wanted the British troops replaced by a UN peacekeeping force. Total integration with the UK was favored by 52% of the Catholics and 83% of the Protestants. 55% of the Catholics blamed extremists on both sides for the troubles and 48% of the Protestants blamed the IRA for the troubles.
- July 4 -- Secretary of State for N.I. Merlyn Rees announced the introduction in the British House of Commons of a new Northern Ireland Bill which would provide for a constitutional convention, composed of 78 elected members, with an independent chairman.
- July 4 -- Irish Foreign Affairs Minister Garret Fitzgerald said that his government's policy towards N.I. was to preserve the peace and the protection of the Catholic minority. The Irish Government's aim was to persuade the Northern majority that the only viable solution was a power-sharing one, to which the minority was entitled.
- July 9 -- Secretary of State for N.I. Merlyn Rees said that he had begun his phased program of releases from detention and that a complete phasing out was possible if paramilitary organizations were willing to respond to "this step".
- July 15 -- A report published by the Association of Legal Justice in Northern Ireland covering a two-month study of court decisions in N.I. concluded that the Royal Ulster Constabulary showed anti-Catholic bias. The Association said the Protestant law-breakers had a three times better chance of escaping imprisonment than Catholics had. It also said that Catholics in N.I. felt they had been deserted by the Government of the Irish Republic.
- Nov. 20 -- The British Government published a Green Paper entitled 'Constitutional Convention Procedure', outlining election procedures for the Convention, which was to be a deliberative body, not a legislative body.

1974

- Nov. 29 — The Prevention of Terrorism Bill, a series of measures against terrorists, was enacted in Great Britain. Measures included outlawing the IRA in Britain, curbing travel to and from Ireland, and granting the police unprecedented powers to fight terrorism in England.
- Dec. 20 — The Provisional wing of the IRA announced an 11-day Christmas truce beginning Dec. 22, in Ulster and England, which would be extended if the British Government met the following demands: a withdrawal of the British Army to its barracks and a declaration of intent to withdraw from Northern Ireland, an end to internment, an amnesty for all prisoners convicted of political crimes, and the recognition of the right of the Irish people to decide their own future.
- Dec. 31 — Secretary of State for N.I. Merlyn Rees announced that 20 detainees would be released, that 50 others would receive a 3-day parole, and that over 100 convicted prisoners due to be released by the end of March would have their sentences remitted.

1975

- Jan. 2 — The Provisional IRA announced an extension of its ceasefire until Jan. 16, to enable the British Government to respond more positively to its demands.
- Jan. 14 — Secretary of State for N.I. Merlyn Rees outlined ways Army activity could be reduced and internment ended in the event of a 'permanent cessation of violence'.
- Jan. 16 -- The Provisional IRA announced that the ceasefire would not be renewed because British concessions did not go far enough.
- Feb. 9 -- The Provisional IRA announced the resumption of its ceasefire for an indefinite period of time following talks with British officials.
- Feb. 24 — Secretary of State Merlyn Rees announced the release of 80 more persons detained without trial.
- Feb. 27 — The Ulster Defense Association (UDA) announced that, because of 'back door' negotiations' between the British Government and the Provisional IRA, it was taking over responsibility for policing Loyalist areas in Belfast, and that the RUC would no longer be welcome in those areas.
- March 15 — Rivalry between two Protestant paramilitary groups, the Ulster Defense Association (UDA) and the Ulster Volunteer Force (UVF) erupted in Belfast with the shooting of two UDA members by masked gunmen.

1975

- April 7 — After being marred by sporadic outbursts of violence, new ceasefire orders were issued by the Provisional IRA: IRA activities would be related to the level of violent activity by British and sectarian forces.
- May 1 — Election returns for the Constitutional Convention gave the United Ulster Unionist Council (UUUC) 46 out of 78 seats, the Social Democratic and Labour Party (SDLP) 17 seats, the Alliance Party, 8 seats, the Unionist Party of Northern Ireland (UPNI) 5 seats, and the Northern Ireland Labour Party and Independent Loyalist Party 1 seat each. The Convention met for the first time on May 8, under the chairmanship of Sir Robert Lowry, Lord Chief Justice of N.I.
- May 28 — Six Protestant paramilitary groups formed the Ulster Army Council, under a unified command structure. The "loyalist army" would defend Protestant positions should British troops withdraw from N.I. The organization was said to exclude the Ulster Volunteer Force (UVF), which was engaged in a violent feud with the Ulster Defense Association (UDA).
- Sept. 8 — Protestant political leaders of the Vanguard, Official Unionist and Democratic Unionist Parties, members of the UUUC, voted 37 to 1 to oppose any form of power-sharing with Catholics in an eventual N.I. government. The only dissenter was William Craig, leader of the Vanguard Party, who had advocated power-sharing on a voluntary and temporary basis. Mr. Craig resigned as head of his party's delegation following the vote.
- The Ulster Defense Association, the most powerful of the Protestant paramilitary groups, attacked the UUUC's rejection of voluntary power-sharing on Sept. 22.
- Oct. 24 -- The UUUC expelled William Craig, leader of the Vanguard Party, along with three of his colleagues, for advancing the notion of voluntary power-sharing with the Catholics in an attempt to form an emergency government in N.I.
- Nov. 4 -- Secretary of State for N.I. Merlyn Rees announced that the 'special category' (privileged political status) for prisoners convicted of terrorist crimes in N.I. would be abolished on March 1, 1976.
- Nov. 10 -- Secretary of State for N.I. Merlyn Rees criticized the report submitted to him by the Northern Ireland Constitutional Convention, which comprised only the views of the UUUC. The report rejected power-sharing at the cabinet level, asked for control over British forces in the province, continued subsidies from Westminster, and for an increase in N.I. representation in the British House of Commons from 12 to 20 members.

1976

- Jan. 12 — Secretary of State for N.I. Merlyn Rees announced he was reconvening the N.I. Constitutional Convention for a period of a month in an attempt to find a compromise solution to the question of power-sharing.
- March 5 — Secretary of State for N.I. Merlyn Rees announced the dissolution of the Constitutional Convention following its failure to reach agreement on a power-sharing system of government for N.I. Mr. Rees stated that his government was not contemplating any new political initiatives in N.I. and that direct rule of the province by Britain would continue indefinitely.
- June 1 — The Irish Government approved the Criminal Law (Jurisdiction) Acts, measures designed to increase cooperation in fighting terrorism between the British and the Irish Governments. The Acts fill some of the loopholes in the extradition agreements between N.I. and the Irish Republic and designates several terrorist offenses that could be tried on either side of the border, such as murder, manslaughter, kidnapping, arson, robbery and hijacking.
- July 21 -- The British ambassador to Ireland Christopher Ewart-Biggs was killed near Dublin when a land mine exploded underneath his car.
- Aug. 19 — Mr. Brian Faulkner, former Prime Minister of N.I., announced his retirement from the leadership of the Unionist Party.
- Sept. 1 — The Irish Government declared a national state of emergency, thus enabling it to push through legislation giving the Irish security forces extra powers to combat terrorism and heavier judicial penalties for terrorist offenses.
- Sept. 10 — In a Cabinet reshuffle, British Secretary of State for N.I. Merlyn Rees was appointed Home Secretary and Mr. Roy Mason was appointed Secretary of State for N.I.

Appendix B.

The toll of violence in Northern Ireland ^{1/}

	1969	1970	1971	1972	1973	1974	1975	30th June
Killed	13	25	174	468	250	216	247	175
Injured	711*	811**	2,507	4,857	2,651	2,398	2,474	1,473+
Explosions	8	158	1,022	1,382	978	685	399	388
Shootings	NA	218	1,756	10,628	5,018	3,206	1,803	890
Armed Robberies	NA	NA	437	1,931	1,215	1,254	1,201	451

* The only figure available is for the RUC injured.

** The only figure available is for Army and RUC injured.

+ Provisional figures.

NA - not available.

^{1/} Figures given by the British Secretary of State for N.I. Mr. Merlyn Rees, reprinted in The (London) Times, August 18, 1976. p. 12.

HUMAN RIGHTS AND THE EMERGENCY LAWS IN NORTHERN IRELAND

The struggle for human rights has long been an issue in Northern Ireland and it, in fact, accompanied the creation of the state in 1921. When after an armed struggle by the Roman Catholic population of the southern counties, the Irish Free State (later the Republic of Ireland) was granted independence, the Protestants in six northern counties of Ireland opted to stay within the United Kingdom. The Government of Ireland Act, 1920,¹ granted local autonomy to Ulster and provided for the establishment of a local parliament. Following a brief armed struggle, the authority of the new parliament and government was imposed by force on the Roman Catholic population—comprising approximately one-third of the population.

Although the basic democratic rights of the citizens of Northern Ireland were guaranteed by the 1920 Act, there was a complete stranglehold of the exclusive Protestant Unionist Party on parliament and on local government. Later, fundamental human rights were in effect annulled by the Civil Authority (Special Powers) Act (Northern Ireland) 1922,² conferred wide powers of arrest, questioning, detention and internment on the executive. When Roman Catholic militants continued the struggle for the reunification of Ireland, the Special Powers Act was used against the Roman Catholic population.³ "In this way the Unionists made use of the legal system to secure themselves both against peaceful political challenge and against internal and external terrorist attacks. They regarded themselves as being fully justified in so doing by the refusal of . . . many Roman Catholics in Northern Ireland to recognize the legitimacy of their state, and by the periodic resumption of hostilities by the IRA (Irish Republican Army)."⁴

Dissatisfaction over the denial of basic human rights played a large role in a civil rights movement in the 1960s in which large sections of the Roman Catholic population asserted claims for the right of equal voting, the right of free speech and association, the right to a fair share of the state's resources and the rule of law. The movement was in many ways in direct imitation of the example set by the civil rights movement in the United States. The civil rights campaign failed to obtain legal remedies against discrimination which resulted in widespread rioting in major Northern Ireland cities in the late 1960's. A commission set up to inquire into the disturbances, listed among others, the following as the major causes for the disorders:

1. A rising sense of continuing injustice and grievance among large sections of the Catholic population in Northern Ireland, in particular in Londonderry and Dungannon, in respect of (i) inadequacy of housing provisions by certain local authorities (ii) unfair methods of allocation of houses built and let by such authorities, in particular, refusals and omissions to adopt a 'points' system in determining priorities and making allocations (iii) misuse in certain cases of discretionary powers of allocation of houses in order to perpetuate Unionist control of the local authority.

2. Complaints, now well documented in fact, of discrimination in the making of local government appointments, at all levels but especially in senior posts, to the prejudice of non-Unionists and especially Catholic members of the community, in some Unionist controlled authorities.

3. Complaints, again well documented, in some cases of deliberate manipulation of local government electoral boundaries and in others a refusal to apply for their necessary extension, in order to achieve and maintain Unionist control of local authorities and so to deny to Catholics influence in local government proportionate to their numbers.⁵

The Cameron Commission also mentioned the resentment of the Roman Catholic community at the continued existence of the Special Powers Act, the exclusively Protestant "B Specials," paramilitary force, and the siting of most new economic development in the Protestant areas only. The commission also re-

¹ The Government of Ireland Act, 1920, 10 & 11 Geo. 5, c. 67.

² The Civil Authority (Special Powers) Act (Northern Ireland) 1922, 12 & 13 Geo. 5, c. 5 (N. 1) (now repealed).

³ K. Boyle, T. Hadden & P. Hillyard, "Law and State. The Case of Northern Ireland" 6 (1975).

⁴ *Id.*, at 7.

⁵ Disturbances in Northern Ireland: Report of the Commission appointed by the Governor of Northern Ireland, Cmd 532, Para. 229 (1969) (Cameron Commission).

futed the allegation that "agitation for civil rights [was] a mere pretext for other and more subversive activities..."⁶

Another tribunal inquiring into the disturbances concluded that the riots were "communal disturbances arising from a complex political, social and economic situation."⁷ The Scarman Tribunal also found that the police, the Royal Ulster Constabulary and the Ulster Special Constabulary, has acted incorrectly on six occasions involving marches and riots and that it had been ineffective in restraining aggression by the Protestant community.⁸

After 1968, when the first disturbances took place, there was a major escalation in events in Northern Ireland. In August 1969, British soldiers were brought into the state to act as peacemakers between the warring communities. At first the British troops were welcomed by the Catholics as saviors, but the position rapidly changed when the forces conducted constant searches of Catholic homes and applied the law repressively against them. As the welcome of the soldiers wore out, a guerrilla conflict erupted between the British Army and the Irish Republican Army. In 1971, by the end of July, 12 British soldiers were killed on the streets of Northern Ireland.⁹ This escalation in violence led to the introduction of internment without trial in August 1971. In March 1972, the British government abolished the Northern Ireland (Stormont) parliament and imposed direct rule from Westminster.

The first priority of direct rule was the repeal of the Special Powers Act and its replacement by acceptable measures for dealing with terrorists. A committee headed by Lord Diplock was appointed to make recommendations for legislation. However, before the Diplock Committee finally reported, the government brought in a new system of detention without trial in November 1972.¹⁰

In order to simplify procedures for arrest and questioning the Diplock Committee recommended that members of the armed forces should have the power to arrest without warrant any person suspected of involvement in terrorism and to detain him for up to 4 hours. This and other recommendations of the Diplock Committee were generally implemented in the Northern Ireland (Emergency Provision) Act, 1973.¹¹ The main thrust of the Act was to give the community protection against terrorism and to reduce the effectiveness of intimidation as a means to prevent the prosecution of terrorists. Section 12 of the Act empowered the Army to arrest and detain suspected terrorists for up to 4 hours, after which, under § 10 the person could be released or handed to the police for formal charging or for further questioning for 72 hours. Section 16 allowed the Army and the police to question any person as to his identity and knowledge of terrorist activity.

Of the emergency legislation it has been said:

Both the Special Powers Act and the Northern Ireland (Emergency Provisions) Act constituted an effective abrogation of the rule of law in the sense that under them the security authorities retained the power to arrest and detain anyone they pleased without having to give any justification and without fear of being called to account in respect of any decisions later shown to have been unjustified.¹²

The impact of the emergency legislation may best be examined in light of the various measures authorized under its provisions.

ARREST, DETENTION AND SCREENING

The elimination of legal controls on the power of arrest and detention resulted in operations by the Army which were guided by its "own internal constraints and values than by the provisions of the law."¹³ The Army undertook a screening operation in the Roman Catholic areas in order to ferret out the persons who were involved in or sympathetic to the Irish Republican Army. Large numbers of persons were arrested and questioned on the presumption that they had some knowledge of terrorist organizations and activities. The Army kept

⁶ *Id.*

⁷ Violence and Civil Disturbances in Northern Ireland in 1969: Report of Tribunal of Inquiry, Cmd. 566. 11 (1972) (Scarman Tribunal).

⁸ *Id.*, 15-19.

⁹ Between 1968 and June 1977 total fatalities in Northern Ireland were 1,768. The protection of human rights in Northern Ireland, Cmd. 7009. 6 (1977).

¹⁰ Detention of Terrorists Order, Stat. Inst. 1972, No. 1632.

¹¹ The Northern Ireland (Emergency Provisions) Act, 1973, c. 53.

¹² Boyle, *Supra* note 3, at 40-41.

¹³ *Id.*

a "wanted" list of persons who were subjected to screening. In addition, others who were found on the streets late at night or those who otherwise appeared suspicious or were acting aggressively were arrested. After arrest the person concerned was questioned on his movements and on his knowledge of terrorist activities. If any admissions were made or any useful leads arose, the person was handed over to the police for formal charging.

The police in Northern Ireland, however, continued to maintain the traditional approach and only those persons directly suspected of having committed a specific offense were arrested and questioned, and only those against whom a specific charge could properly be preferred were detained in custody. However, since the Army operated largely in the Catholic and Republican areas and the police operated in militant Protestant or mixed areas, the practical result of this difference in approach was that there was a huge imbalance in the number of Catholic and Protestant detainees. For example, in mid-1974, there were nearly 500 Republicans in detention compared with only 50 Protestant Loyalists although their numbers were roughly equal in cases before the courts.¹⁴

In some cases, the power of arrest in the Emergency Provisions Act has been used in conjunction with a similar power granted in the Prevention of Terrorism (Temporary Provisions) Act, 1976,¹⁵ which was enacted in response to IRA terror bombing in the United Kingdom. The portions of the Act applicable to Northern Ireland empower the Secretary of State to exclude from Great Britain, Northern Ireland or the United Kingdom, persons involved in terrorism aimed at influencing public opinion or government policy with respect to Northern Ireland affairs and to arrest without warrant persons reasonably suspected of any breach of the Act to be held for questioning for up to 7 days without being charged.

The provisions of the Act, which is renewable every 11 months,¹⁶ have brought protests, and the National Council for Civil Liberties has condemned the Act as being ineffective in stopping terrorism while it is destructive of civil liberties.¹⁷ The report of the Council includes case studies and shows concern at the effect of isolation for 7 days inside a police station. The report states that because of the conditions, a number of persons have come very close to signing confessions.

Until October 1976, the Prevention of Terrorism Act has been used to detain 208 persons in Northern Ireland, 105 of whom have been charged with various offenses.¹⁸ In some cases, arrests have been made under the Emergency Powers Act, § 10, which permits a 76 hour detention followed by up to 7 days detention under the Prevention of Terrorism Act.

In response to criticism of the working of the Act, in December 1977 the Home Secretary set up a committee to inquire into the efficiency of the Act and its effect on civil liberties.¹⁹ At the time of writing no report has been issued by the Committee. In the meantime arrests are continuing under the Act. Recently the editor of the Republican News, the newspaper of the Republican movement in Northern Ireland, was arrested in a joint operation of the police and the Army.²⁰ The police have refused to disclose the reasons for his arrest. At the same time a leader of the Sinn Féin in Northern Ireland was released after nearly 7 months' detention. The Lord Chief Justice of Northern Ireland ruled that there was insufficient evidence to sustain charges against him of belonging to the Provisional IRA.

INTERNMENT, TORTURE AND INTERROGATION

In August 1971 the Special Powers Act was used to reintroduce internment—depriving a person of liberty without charge or trial—and 342 men were arrested. Within 6 months of the reintroduction 2,357 persons had been arrested and 1,600 released after interrogation.²¹ Upon their release, the internees told stories of torture and brutality which further fueled the revulsion of the minority Catholic community.²² The Irish newspapers described in detail the meaning of "interroga-

¹⁴ *Id.*, 47-48.

¹⁵ Prevention of Terrorism (Temporary Provisions) Act, 1976, c. 8 (formerly the Prevention of Terrorism Act, 1974, c. 56).

¹⁶ *Id.*, § 17.

¹⁷ C. Scorer, "The Prevention of Terrorism Acts 1974 and 1976."

¹⁸ *Id.* at 35.

¹⁹ The Times (London), Dec. 13, 1977, at 2.

²⁰ The Times (London), Sept. 11, 1978, at 2.

²¹ Lowry, "Internment: Detention Without Trial in Northern Ireland," 5 *Human Rights* 261, 274 (1976).

²² *Id.*

tion in depth"²³ and eventually a committee of inquiry was set up to look into the allegations of torture and brutality. The committee reported that 11 of the 40 men whose detainment it had investigated were subjected to treatment which consisted of:

- (a) keeping the detainees' heads covered by a black hood except when being interrogated or in a room by themselves;
- (b) submitting the detainees to continuous and monotonous noise of a volume calculated to isolate them from communication;
- (c) depriving the detainees of sleep during the early days of the operation;
- (d) depriving the detainees of food and water other than one pound of bread and one pint of water at six hourly intervals;
- (e) making the detainees stand against a wall in a required posture (facing wall, legs apart, with hands raised up against wall).²⁴

The committee, however, concluded that the five techniques, though constituting physical ill treatment, did not amount to physical brutality. Thus, the report "denied their meaning by Alice-in-Wonderland logic, by obscure and hypocritical phrases that whitewashed the brutality and spoke only of 'ill treatment'. . . ."²⁵ The report has been characterized as a "ludicrous mockery of common sense [and] a perversion of justice."²⁶

In view of the unconvincing nature of the Compton investigation, a second inquiry was launched to examine the interrogation procedures. This committee chaired by Lord Parker noted that the techniques had been used in several counterinsurgency operations throughout the world and the majority concluded that their use, subject to safeguards, was justified in the circumstances.²⁷ A minority report written by Lord Gardiner condemned the techniques as being contrary to domestic and possibly international law. Lord Gardiner also noted that the techniques had alienated the local population and that they were counterproductive. On publication of the report, the British Government announced that the use of the five techniques would be discontinued.

Prior to the report of the Parker Committee, the Republic of Ireland decided to question the exercise of internment and the legitimacy of the five techniques under the European Convention of Human Rights. The Irish Government also claimed that internment had been carried out with discrimination based on political opinion. The Convention guarantees the rights to life, liberty, speech, assembly, association, family life, correspondence, and freedom from torture and inhuman or degrading treatment (Arts. 2-14). Article 15 grants the states a general right of derogation in time of war or other public emergency threatening the life of the nation. To ensure the observance of the Convention, it set up a European Commission and the Court of Human Rights.²⁸

The European Commission sided with the United Kingdom on the issues of internment and discrimination but held that the 5 techniques constituted a practise of inhuman treatment and torture in violation of the Convention.²⁹

In the belief that the findings against the United Kingdom would be upheld, the Irish Government took the case to the European Court of Human Rights. In its findings, that court decided by 13 votes to 4 to overrule the finding of the European Commission that the five techniques constituted a practice of torture under the Convention.

However, the Court went on to rule that the techniques were inhuman and degrading and in breach of Article 3.³⁰ The Court also rules that the extrajudicial measures to combat terrorism in Northern Ireland were justified by Article 15 permitting derogation in times of emergency. The verdict also noted that the techniques has been abandoned in March, 1972, and that the British Government had given an unqualified undertaking to the court that they would never be re-

²³ O'Boyle, "Torture and Emergency Powers under the European Convention on Human Rights: Ireland v. The United Kingdom," 71 *Am. J. Int'l L.* 674, 675.

²⁴ Report of the Enquiry into Allegations Against the Security Forces of Physical Brutality in Northern Ireland Arising Out of Events on the 9th of August, 1971, Cmnd. 4823, 58-67 (1971). (Compton Committee)

²⁵ R. Hall, "The Irish Triangle: Conflict in Northern Ireland" 181 (1976).

²⁶ *Id.*

²⁷ Report of the Committee of Privy Counsellors Appointed to Consider Authorized Procedures for the Interrogation of Persons Suspected of Terrorism. Cmnd. 4901. 30 (1972).

²⁸ For text of Convention see. Council of Europe. Collected Texts. 1-19 (9th ed. 1974).

²⁹ Ireland v. The United Kingdom. Application No. 5310/71, Report of the European Commission of Human Rights 151-220 (adopted Jan. 25, 1976).

³⁰ The Times (London), Jan. 19, 1978, at 1, 5.

introduced. The British Government has also paid out £188,250 in damages to the persons subjected to the interrogation techniques.⁴¹

Following the imposition of direct rule, the British Government took a different tack on internment, and the Secretary of State for Northern Ireland ordered the release of 377 internees while detaining a further 21 suspects.⁴² In November 1972, in place of the Special Powers Act, the Secretary introduced a new regulation.⁴³ Under a two stage process, a suspect would be served with an interim custody order allowing detention for up to 28 days. Within those days, the case would be referred to a Commissioner to inquire into whether the suspect was involved in any terrorism and whether his detention was necessary for the protection of the public. If the Commissioner determined that the suspect should continue to be detained, the detainee had a right of appeal, for which purpose access was granted to the record of proceedings before the Commissioner. Both the proceedings were in private and at neither hearing would rules of evidence be applied. Thus the proceedings provided a form of review mechanism. The major defect of the procedure was that the accused was at no time informed of the precise nature of the charge against him making it impossible for him to present a proper defense.⁴⁴ Moreover, the accused could be excluded from the proceedings if his presence was considered to be contrary to public security.

Internment and its procedures resulted in a mounting public disquiet and eventually a committee was set up under Lord Gardiner to look, *inter alia*, into the working of the Emergency Provisions Act of 1973. In its report⁴⁵ the committee proposed new detention procedures. It was suggested that detainees should have the right to make written representations and to appear before a Detention Advisory Board. The criteria of detention was also recommended to be altered from "necessary for the protection of the public" to "only if his freedom would seriously endanger the general security of the public."⁴⁶ In acceptance of the recommendations of the Gardiner Committee, the Northern Ireland (Emergency Provisions) (Amendment) Act, 1975,⁴⁷ was enacted.

Internment lasted from August 1971 to February 1975, during which period a total of 2,158 internment orders were issued.⁴⁸ The policy was suspended after the IRA announced a truce and the end was justified on the ground that internment had not proved to be an effective means by which to reduce violence.⁴⁹ However, periodic calls are made for its reintroduction⁴⁵ and, since the Northern Ireland situation is thought to have a high potential for future political instability and violence, the further use of internment cannot be ruled out.⁴¹

CONCLUSION

Many democratic societies have been compelled to suspend civil liberties during times of emergency. Britain, in spite of its strong traditions in the protection of human rights, has been similarly obliged to take strong measures to combat the volatile situation in Northern Ireland. However, alongside those measures, Britain has also attempted the implementation of reforms aimed at eliminating discrimination.

After the imposition of direct rule from London, attempts to strengthen the enjoyment of human rights have been made under the provisions of the Northern Ireland Constitution Act, 1973.⁴² These provisions void Northern Ireland legislation discriminating against any person or class on grounds of religious belief or political leaning. Discriminatory acts by public officials are also made unlawful.

⁴¹ *Id.* Another potentially embarrassing complaint has been made by four Republican prisoners in the Maze prison, Long Kesh, Northern Ireland alleging violations of nine articles of the Convention. The prisoners intend to file their complaint with the European Commission of Human Rights (*The Times* (London), Aug. 8, 1978, at 1).

⁴² *Supra* note 21, at 292.

⁴³ Detention of Terrorists Order, Stat. Inst. 1972, No. 1632.

⁴⁴ *Supra* note 21, at 305.

⁴⁵ Report of a Committee to consider, in the context of civil liberties and human rights, measures to deal with terrorism in Northern Ireland, Cmnd. 5847 (1975).

⁴⁶ *Id.* Para. 166.

⁴⁷ The Northern Ireland (Emergency Provisions) (Amendment) Act, 1975, c. 62. Both the 1973 and 1975 Acts have now been consolidated in the Northern Ireland (Emergency Provisions) Act, 1978, c. 5.

⁴⁸ R. Rose, Northern Ireland. Time of Choice 24 (1976).

⁴⁹ *Id.*

⁴⁰ *The Times* (London), March 1, 1978 at 2.

⁴¹ *Supra* note 21, at 314.

⁴² The Northern Ireland Constitution Act, 1973, c. 36.

Under the same Act, a Standing Advisory Commission on Human Rights has been established. The Commission is required to advise the government on the adequacy and effectiveness of the laws in force in preventing discrimination on the grounds of religion or political belief and in redressing those aggrieved by such discrimination.

The Commission has embarked on some ambitious projects and has done valuable work on the question of drawing a Bill of Rights which would guarantee fundamental rights and freedoms in Northern Ireland. At present, the United Kingdom has no Bill of Rights of the kind found in other democracies. As a product of more than 2 years' intensive work, the Commission has recommended that the protection of human rights in Northern Ireland should be achieved by the incorporation of the European Convention on Human Rights into the domestic law of the United Kingdom.⁴³ The Commission further recommended that in due course a separate Charter of Rights should form part of a fresh constitutional settlement of the Northern Ireland question.⁴⁴

Additional conclusions reached by the Commission are:

1. A substantive body of law is now in force in Northern Ireland which is designed to protect various aspects of human rights. This existing body of law is impressive and should not be underrated. (See Appendix I for list).

2. There is a strong case for the clarification and codification of police powers and emergency powers within the United Kingdom. An independent inquiry should be set up to consider these matters.

3. An independent inquiry should be instituted into the substance and institutions of our system of administrative law with a view to increasing the rights and freedoms of the individual in relation to public authorities.⁴⁵

While these measures are being debated, the violence continues in Northern Ireland, though at a less frenzied pace. Whether the implementation of those measures will result in a return to an orderly society cannot be predicted.

Prepared by Kersi B. Shroff, Legal Specialist, American-British Law Division, Law Library, Library of Congress, September 1978.

⁴³ *Supra* note 9, Chap. 6. Britain ratified the Convention in 1951 but it is among a minority of states in which the Convention does not form part of the internal law. *Id.* at Para. 5.23.

⁴⁴ *Id.* at Para. 6.15.

⁴⁵ *Id.* at 75-77.

APPENDIX E

PRESIDENT CARTER'S STATEMENT URGING PEACE IN NORTHERN IRELAND

Various references in the report are made to President Carter's statement on Northern Ireland issued on August 30, 1977.

The following is the official text of the message as released by the American Embassy in London on that date:

PRESIDENT CARTER'S STATEMENT URGING PEACE IN NORTHERN IRELAND

Throughout our history, Americans have rightly recalled the contributions men and women from many countries have made to the development of the United States. Among the greatest contributions have been those of the British and Irish people, Protestant and Catholic alike. We have close ties of friendship with both parts of Ireland, and with Great Britain.

It is natural that Americans are deeply concerned about the continuing conflict and violence in Northern Ireland. We know the overwhelming majority of the people there reject the bomb and the bullet. The United States wholeheartedly supports peaceful means for finding a just solution that involves both parts of the community of Northern Ireland and protects human rights and guarantees freedom from discrimination—a solution that the people in Northern Ireland, as well as the Governments of Great Britain and Ireland can support. Violence cannot resolve Northern Ireland's problems; it only increases them, and solves nothing.

We hope that all those engaged in violence will renounce this course and commit themselves to peaceful pursuit of legitimate goals. The path of reconciliation, cooperation and peace is the only course that can end the human suffering and lead to a better future for all the people of Northern Ireland. I ask all Americans to refrain from supporting, with financial or other aid, organizations whose involvement, direct or indirect, in this violence delays the day when the people of Northern Ireland can live and work together in harmony, free from fear, Federal law enforcement agencies will continue to apprehend and prosecute any who violate U.S. laws in this regard.

U.S. Government policy on the Northern Ireland issue has long been one of impartiality, and that is how it will remain. We support the establishment of a form of government in Northern Ireland which will command widespread acceptance throughout both parts of the community. However, we have no intention of telling the parties how this might be achieved. The only permanent solution will come from the people who live there. There are no solutions that outsiders can impose.

At the same time, the people of Northern Ireland should know that they have our complete support in their quest for a peaceful and just society. It is a tribute to Northern Ireland's hardworking people that the area has continued to attract investment, despite the violence committed by a small minority. This is to be welcomed, since investment and other programs to create jobs will assist in ensuring a healthy economy and combating unemployment.

It is still true that a peaceful settlement would contribute immeasurably to stability in Northern Ireland and so enhance the prospects for increased investment. In the event of such a settlement, the U.S. Government would be prepared to join with others to see how additional jobcreating investment could be encouraged, to the benefit of all the people of Northern Ireland.

I admire the many true friends of Northern Ireland in this country who speak out for peace. Emotions run high on this subject and the easiest course is not to stand up for conciliation. I place myself firmly on the side of those who seek peace and reject violence in Northern Ireland.

APPENDIX F

THE BRITISH ARMY IN NORTHERN IRELAND

The delegation made no attempt during its visit to look into the military presence of the British Army in Northern Ireland.

The army involvement is readily apparent by the constant patrols in Belfast, the security precautions at the airport, and the electronic and search procedures being employed at the access routes into the shopping area of Belfast.

Travelling within the cities and in the countryside, army checkpoints are permanently in operation. The army barracks, as well as the police stations, are heavily barricaded and walled in as a protection against attacks and bombings.

The latest information the delegation was able to obtain on the functions of the British Army is an article which appeared in *Army Magazine* in December, 1976 by Col. James B. Deerin, NGAUS Retired, a former newspaperman and curator of the National Guard Heritage Gallery at the time the appearance of the article.

The delegation is aware that this article has already appeared in the Congressional Record, but it felt that its reprinting here was warranted in order to present a complete picture of the situation in Northern Ireland.

"Twilight War" (Text of the Article).

TWILIGHT WAR

(By Col. James B. Deerin, NGAUS, Retired)

Not since the days of Rudyard Kipling's *Gunga Din*, when the British Army posted a far-flung empire, has it had such difficult and frustrating duty as it has today in Northern Ireland.

While its involvement in Ulster may not be accurately portrayed as England's Vietnam, there are parallels. It is a war of counterinsurgency in which the army operates under heavy restraint. It is a war in which it is difficult, frequently impossible, to know who is the enemy.

After seven years, it is obvious that under the present rules clear-cut victory over the terrorists is not attainable. It is a twilight war that drains manpower and energy that otherwise would be directed to NATO, Britain's primary defense commitment.

While the British Army has, for many years, maintained three resident regiments in Northern Ireland, a province of the United Kingdom, it has been compelled to nearly quadruple the size of its force here since the outbreak of the current troubles in 1969. At one point, in 1972, the force level exceeded 21,000, a sizeable slice of England's relatively small land force.

There is no intent here to discuss the complex political issues that have fused the current troubles, but, at least, a brief outline of the situation is necessary to understand the difficulties faced by the army and the delicate political environment in which it operates.

The troubles are rooted in nearly two centuries of discontent and bitterness which stem from religious differences and economic disparity. In this small province there are a million and a half citizens, about two-thirds of them Protestant. The minority—the Catholics—are largely poor and their employment opportunities limited.

Before the disbanding of the provincial government, there was little Catholic representation. Few Catholics are members of the Royal Ulster Constabulary or employed by government agencies.

The goal of the Catholics is to unite the six northern counties with the predominantly Catholic Irish Republic, from which they had long been separated when that nation was formed in 1949. For some years before that, the 26 counties in the south had been a self-governing free state.

A united Ireland has been aggressively sought by the Irish Republican Army (IRA) which has, in the past, engaged in violence, but which is currently abiding by a cease-fire it put into effect in 1975.

The war is carried on now by the breakaway Provisional IRA (PIRA), the extreme, violent arm of the movement. Opposing it are a number of Protestant paramilitary organizations which can be equally as violent in their efforts to keep the *status quo*, which is to say, continue Ulster as part of the United Kingdom.

The conflict between PIRA and such Protestant extremist organizations as the Ulster Volunteer Force and the Ulster Defense Association is what the British call the "tit-for-tat" war. If two Catholics are killed, two Protestants will be killed. If a Catholic pub is bombed, a Protestant pub will be bombed.

PIRAs prime target is the British government and Protestant-owned businesses. Its strategy is to cripple the economy and continue its campaign of terror to discourage the government to a point where it will withdraw its soldiers and negotiate with PIRA on its terms.

The arm is somewhere in the middle, seeking primarily to keep the violence from escalating to open warfare which, its leaders are convinced, would lead to the killing of thousands and total destruction of Ulster's cities and towns.

The mission of the army is to rout out the terrorists, cut off their supplies and destroy their arsenals. In doing this, the responsibility for protecting the lives and property of Ulster's citizens is paramount. The objective is to restore peace, as tenuous as it always is in this land, in order that political negotiations, aimed at permanent solution, may be resumed.

As the arm has found in its seven years here, there are limits to how effectively a military force can carry out its mission when it must operate in an environment in which civil law continues in effect and the rules of engagement are written by politicians.

PIRA and the Protestant paramilitary organizations are hidden armies, scattered over wide areas with their operations well protected by sympathetic segments of the population. While they are not large, truly organized forces, they hold the initiative. There are no fixed engagements, no troop movements to be observed.

The British do not have a force sufficiently large to permit it to do more than it currently does, which is to keep a cap on the terrorists' activities by making it as difficult as possible for them to operate.

Army strength now is about 14,000, scattered through the six northern counties. It is organized in three infantry brigades under the command of Gen. Sir David House, the army's former director of infantry. Headquarters, British Army, N. Ireland, is at Thepval Barracks, a long-established base at Lisburn, about 15 miles from Belfast.

The largest brigade is the 3rd which has responsibility for four of the six counties, making up the southern half of the province. Its troops patrol the troublesome, ill-defined border between Ulster and the Irish Republic.

The 39th Brigade has the mission of securing Belfast and the surrounding areas. The 8th is posted in Ulster's second largest city, Londonderry, and patrols the northwest corner of the province, including about 40 miles of border.

There are, in all, 16 regiments and battalions (both about the size of a U.S. Army battalion) supported by the usual special detachments—communications, bomb disposal, sappers (engineers), and medical.

The army is augmented by a unique volunteer, citizen-soldier organization—the Ulster Defense Regiment (UDR). It has 11 infantry battalions and a strength of roughly 8,000, of which about 1,600 work full time.

The regiment was activated in 1970 for the defense of Northern Ireland and unlike the British Territorials, the army's traditional reserve, it cannot be deployed outside of the province. The regiment is commanded by a regular brigadier and regulars command the battalion. Other than that, it is a citizen force.

The UDR, which has battalions in all counties, is under tactical but not administrative control of the army. Some battalions have responsibility for specific areas while others may be attached to regular units in operations.

Members of the regiment are expected to spend one or two nights a week on duty and some weekends. In addition, they attend 15 days of summer training, some of which was conducted this year in England. They perform all the duties of a regular unit, except they are not trained in riot control and are excluded from operations in some critical areas of Belfast and Londonderry.



The Royal Air Force provides support with a detachment of helicopters and light fixed-wing aircraft based at Aldergrove Airport. This commercial airport about 15 miles outside Belfast is probably the most strongly secured air terminal and field in the world. It is patrolled by a company of Royal Military Police.

The smaller number of regular army regiments are here on resident tours which extend 18 for months. Members are accompanied by their families and most of these units are stationed at or near permanent army bases such as Thiepval. The rest of the units—most of which come from Britain's Army of the Rhine—are on four-month rotation tours.

Nearly every unit of the United Kingdom Land Forces and the Army of the Rhine, which forms the British NATO commitment, has served in Northern Ireland, most for several tours. Very few officers of the regular army have not served at least one tour here and some have served as many as five.

PIRA is the main enemy force and it is not large. There are probably not more than 100 hard-line activists in a battalion tactical area of responsibility (TAOR), and likely to be fewer in rural areas. But it is organized, disciplined and unrelenting. There is a high command, sometimes believed to be in Dublin, and at least two brigades. The Belfast brigade is known to have three battalions.

The basic unit is the company and in sparsely settled sections these will be separate, probably reporting directly to a brigade headquarters.

While the structure is there, the organizations are skeletal, generally having a staff that includes a commander, deputy-adjutant, intelligence, training, recruiting and armament (bomb) officers and paymasters. There may be a handful of privates in achieve-service status.

Scattered through a battalion or company area are pools of inactive or reserve members who may be called out as needed. These include women who act as lookouts and messengers, who are essential since PIRA rarely uses the public telephone system. There is a large network of couriers, the backbone of their communications system.

There exists also an organization of teenage boys known as the *Fianna*. Members are used for scouting and hijacking assignments and to steal the cars which are used as bomb carriers.

PIRA has no fixed headquarters but meets in houses and industrial buildings that are considered safe. Except in hot pursuit, the army may not institute a house search without brigade headquarters' permission.

Training of PIRA members starts with a week of basic for recruits and extends to intensive specialized training that many key PIRA people undergo, sometimes in a school operated in a European or Middle Eastern country by one of the known international terrorist organizations. There are indications that specialists from those organizations have been smuggled into Northern Ireland to train PIRA members.

Like most guerrilla armies, PIRA has a hodgepodge of weapons in its arsenal, many of them purchased from foreign arms dealers, including, reportedly, some in the United States. The preferred rifle is the AR15 (the British use the NATO 7.62-mm rifle), but there are plenty of M1 carbines and Garands around and a few Russian and even Chinese weapons have been captured by the British.

In automatic weapons, the Sten 9-mm and the Thompson submachine gun are favored. PIRA is known to have a modest inventory of rocket launchers and mortars, some of which are manufactured in their own arsenals.

It is, however, in the manufacture of bombs and incendiaries and the necessary detonating devices that PIRA has shown its greatest sophistication.

A great deal more is known and heard about PIRA for a number of reasons, primarily because it is the aggressor force. The Protestant paramilitary organizations tend to be more defensive and engage more in retaliatory actions. The British Army is not, *per se*, its enemy, but the Protestants are expected to defend against the army when it moves to capture its personnel or arms.

There are extremists on the Protestant side who would like to see the army withdraw and thus permit open civil war between the two factions on the theory that the Protestants, with twice the manpower, greater economic resources and wider citizen support, would win.

Although the enemy is the same throughout the province—PIRA and the Protestant terrorists—the army seeks him out and fights him on two different types of battlefields. In Belfast, Londonderry and other larger cities and towns, the battlefields are city streets and cluttered housing areas where the army must operate with great caution to avoid harm to the large crowds of citizens who are ever present.

In the rural areas of south and west Ulster, the army fights an enemy rarely seen, in forests, farmland, mountains and lakes. There are long and frustrating periods of surveillance for soldiers seeking to track down the bomber and smuggler.

The game out there is to outguess him—catch him in a surprise road block, spot him setting a culvert bomb and laying a command line for detonation and swoop down on him in a helicopter as he moves over the road transporting explosives or weapons.

In both environments, it is a war against the gunman, bomber and smuggler in which the enemy has the advantage. His tactic is to hit when and where he is least expected. The sniper will squeeze off no more than one or two shots and fade away, his escape route always previously plotted. Frequently, there are accomplices standing by to create diversions to throw off pursuers, and safe houses in which he is hidden.

The bomber has an even greater advantage. He is normally long gone by the time of the blast or, as some here feel, standing in the crowd at a safe distance, watching the results of his work.

The smuggler can pick his border-crossing point and his time, be it by land or water. There is no way to effectively seal off the nearly 300 miles of border with the manpower available.

At all cost, PIRA avoids becoming involved in firefights.

The "patch" patrolled by the 3rd Brigade is some 3,500 square miles. Although it is largely rural, there are several medium-size cities within its borders; thus,

it has battalions deployed in both urban and rural environments. To control this relatively vast area, it has six regular and six UDR battalions.

Its critical operational area is currently the southern portion of Armagh County, which is strongly held by PIRA. It is a "no-go" sector where the army operates aggressively but not without caution, and does much of its patrolling by helicopter. Administrative road traffic is kept to a minimum and, where necessary, is by armored car. Supply of many of its units is almost exclusively by chopper.

PIRA fights to hold control in south Armagh because geographically the area suits its operations. A look at the map shows why. Monaghan County, across the border in the Irish Republic, juts northward well into Ulster, thus giving PIRA a short communications line from arsenals and training bases in southern Ireland into Belfast, the focal point of PIRA operations.

It has had reasonable success in securing its supply lines in the area, but only at great expense in personnel and material captured by army patrols.

In addition to land routes from the south, Armagh has access from the Irish Sea for the movement of weapons and ammunition that continue to reach here from other countries.

The problem in guarding the border is to find it, for it is impossible in many areas to know just where the boundary is between north and south. There are few distinguishing features such as mountains and rivers; it is vague, rambling and poorly marked, making it difficult for patrols which are as sensitive about crossing over as the Irish Republican government is to having them in its territory.

In addition to its border patrols, units of the 3rd Brigade also have responsibility for securing the main rail line between Belfast and Dublin. Trains using the rails have been subjected to bombing and sabotage.

In recent months, the border patrols have been strengthened by the assignment of a squadron of Britain's Special Air Service, an organization similar to the U.S. Special Forces.

The 3rd Brigade is also responsible for securing the perimeter of "The Maze," the maximum-security prison that houses some 1,200 convicted Catholic and Protestant activists. It has one company charged with that duty.

It is not there to keep the prisoners in, but to guard against attack by either Catholic or Protestant groups seeking to free the inmates, among whom are leaders of both factions.

Some 40 miles north of south Armagh is an urban "no-go" area—Andersonstown. A sprawling neighborhood in Belfast, it is almost wholly Catholic and is the headquarters and operating base of PIRA's Belfast brigade. It is also headquarters of the 1st Battalion, King's Own Royal Border Regiment, an element of the 39th Brigade based at Thiepval Barracks.

This is a "patch" where they wage a different kind of war.

As one young company commander on patrol said, pointing to a group of small children playing on the front lawns of a shabby housing development, "This is our battlefield—front lawns, backyards, school yards, parking lots and main streets."

"This is the kind of war," he added, "in which more innocent civilians are killed than soldiers and terrorists."

Andersonstown is without law enforcement; the Royal Ulster Constabulary is not strong enough to patrol there and comes in only when escorted by the army. The army does not attempt nor is it authorized to perform normal police duties. Thus, Andersonstown is something of a jungle where vandalism is taking its toll in an already depressed area.

Scrawled on the walls of deserted buildings and the side of houses are slogans such as, "The Provs rule here." And there is little denying it.

Company commanders are responsible for their TAOR. Based on intelligence passed down from regimental headquarters or gathered by their own patrols or intelligence sections, they normally mount their own patrols and are allowed considerable latitude in operations.

Most of Andersonstown is the TAOR of Somme Company, 1st Battalion, King's Own Royal Border Regiment. It has a strength of 120 men to patrol an area of about a square mile in which live, mainly in multiple dwellings, about 20,000 people. It is one of the most critical areas in the province because here the army comes closest to confrontation with PIRA, but rarely engages him on the ground.

It is here that PIRA plans his moves against the army and Protestant targets which then are carried out in other areas, mainly in the city center. There are, however, occasional attacks on army patrols in the neighborhood, primarily intended to show the people that PIRA is there and free to operate at will.

But Somme Company is there, too, patrolling almost constantly to show the Queen's colors, to deny PIRA freedom of action. This it does with considerable success.

It is important to know your "patch"—the people who live and work there, their habits, their routines. If a suspected or known PIRA member leaves his house an hour earlier than usual or takes a different route from that he normally travels, the information is radioed to company headquarters. If a member is seen driving a car other than his own, he is stopped and the car inspected.

An increased milk delivery, drawn window shades or a housewife carrying what appears to be a larger-than-usual grocery bundle are reasons for increased surveillance. There are "safe" houses in the neighborhood known to the military, but there are restrictions on house searches except in hot pursuit.

Although it is assumed army intelligence agents have, from time to time, infiltrated PIRA and extremist Protestant organizations, one battalion commander described Northern Ireland as an intelligence desert. Commanders are quick to admit that intelligence is hard to come by and that most of it is low-grade.

Company commanders and most of their men know the active terrorists in their TAORs. They see them going about their daily routines and occasionally engage them in conversation. Bulletin boards in company intelligence sections are covered with pictures and descriptions of known activists.

In urban areas such as Andersonstown, most patrols are on foot. The British have developed patrol movements in which every man on patrol covers another and he in turn is covered. As one soldier commented, "We do a lot of walking backwards in Ireland."

Two foot patrols are normally covered by a mobile patrol in a Land Rover or armored car in urban areas and the reserve at company headquarters is rarely more than five minutes away.

Asked how he felt about this type of duty, a soldier responded, "I think I would be safer on a battlefield where I would have a pretty good idea where the enemy would be. He is behind a hedgerow, across the river or off in a tree line. Here you never know."

As a soldier ran a broken line across a small park surrounded by three-story-high apartment buildings, he made the point that every one of the hundreds of windows looking down on the patrol was a possible sniper firing point.

In addition to patrols, vehicle checkpoints (VCP) are used frequently where there is traffic in and out of activist areas. Normally, a VCP is operated for not more than ten minutes to avoid traffic backups, crowd assembly and, specifically callout of a sniper who could zero in on the soldiers.

A company commander stated, "We may not know where or when a terrorist is going to make a move, but we manage to keep him off balance by frequent sweeps and mobile checkpoint operations. And he never knows where or when we will make a move to check him."

Fighting the guerrilla in urban areas presents obstacles for the army which serve as advantages for the terrorists. Confinement and limited maneuver area are serious problems. Quickly gathering crowds, which may in some areas deliberately hamper soldiers by screening the getaway of the gunman or bomber, are problems. The need to limit reaction to avoid harm to civilians who may be in the area is especially restrictive and sometimes limits quick response.

Every soldier on coming here is impressed with the restraints under which he must operate and the fact that he is subject to civil law. Troops are issued yellow cards on which are printed the rules of engagement, describing actions they are permitted to take in specific situations and those that are not permitted.

"This is a soldier's war," Brigadier Martin Farndale, director of British Army public relations, made clear at a briefing at the Ministry of Defense in London before leaving for Northern Ireland.

"It is a war," he added, "in which we depend on the junior officers, noncoms and the soldier out on the point to make judgments they would not be expected to make in normal combat operations. They must make decisions in tense situations."

"Our patrols are small, especially in urban areas; situations develop quickly. Reaction must be fast. There isn't time to ask, 'What do I do now?'"

A battalion commander makes the point strongly, "This is not a shoot-to-kill war. It is not the kind of combat for which a soldier is basically trained to 'kill your enemy before he kills you.'"

A brigade commander reminds his officers that the army is not here to cause bloodshed but to prevent it and that, he admits, makes it tough duty.

Soldiers must adjust to the restraints, be mindful that they are not on a normal battlefield or colonial frontier. They are in a war in which they man machine guns behind barricades which look over streets crowded with citizens of their own country.

A rifleman, crouched in a doorway or behind a mailbox, carefully scans a jammed sidewalk with no way of knowing if anyone out there is carrying a gun or a bomb, knowing most of them are not the enemy but a screen behind which the enemy hides.

The rules of engagement, one is quickly informed, are made by politicians, and within the framework of those rules, the army must go about its mission of routing out terrorists on both sides, destroying their units, depleting their arsenals and stopping the inflow of arms.

It is not an ideal situation in the view of most commanders, but one the army has come to understand as essential where there is warfare in communities in which the majority of people continue to go about their business and attempt to lead normal lives.

The shuttle of organizations back and forth from Germany and England to Northern Ireland undoubtedly is cause for trauma, and there are officers here who feel that the four-month tour should be restudied. It is a matter of concern to commanders of units drawn from the three armored divisions which make up the 1st British Corps of Britain's Army of the Rhine.

There is no question but that the drawdown reduces the readiness of the 1st Corps. Among other things, a unit may be getting ready for movement here, be here or be enroute back to Germany when it normally would be engaging in NATO exercises.

Also, commanders view assignment to Northern Ireland not as a four-month commitment but something longer; as long, some insist, as six months, allowing time for training, lay-up of vehicles to be left in Germany and other movement preparation.

The cycle reverses when an organization returns to Germany. Armored vehicles and artillery must be withdrawn from storage; tankers and gunners, who have been operating as infantrymen in Ulster, must be retrained and the organization reconditioned to perform its normal mission as part of a division.

The disadvantages of the British involvement here are to some degree offset by the fact that, of all the armies in the world, Britain's undoubtedly is the most thoroughly trained in anti-terrorist tactics and urban guerrilla warfare.

With the exception of the problem of family separation, morale here—although there certainly is plenty to gripe about—appears to be high. And that is to the credit of army leadership, for living conditions are poor, at least for troops in the urban area. Soldiers live in burned-out hotels, abandoned factories and prefabricated huts.

In urban areas, again, the duty day may extend from 0500 to midnight. Three is a minimum of recreation, especially for those troops in areas where they dare not go off post except into secured zones, which are not always close at hand.

Army statistics reveal some interesting characteristics of the operations here:

There have been, since the start of the troubles in 1969, 1,644 persons killed, the greater number—1,240—civilians. Civilian, in this instance, includes Catholic and Protestant terrorists, but in that category, the far greater number must be assumed to be innocent victims.

The army has lost 256 killed and 2,800 wounded. The figure does not include 61 members of the UDR and 88 members of the Royal Ulster Constabulary.

The figures for 1976 (through August) show that there have been 1,327 shootings, 550 bombings; 18 Catholics have been assassinated and 28 Protestants. The army has lost ten killed and 94 wounded. Thirteen persons described as terrorists have been killed.

It is interesting to note that the UDR lost eight killed and only 12 wounded. These figures are in addition to the army casualties and would appear to indicate that members of the UDR are special targets for PIRA.

In weapons and ammunition captured, army records show a total of 265 machine guns, 5,118 rifles and pistols, 16 rocket launchers, 49 mortars, 783 mortar

rounds, nearly a million rounds of ammunition and nearly a quarter-million bombs and parcels of raw explosives.

Army officials estimate that currently there are about 929 Catholic terrorists and 504 Protestant terrorists out of action by virtue of arrest and incarceration in Maze Prison.

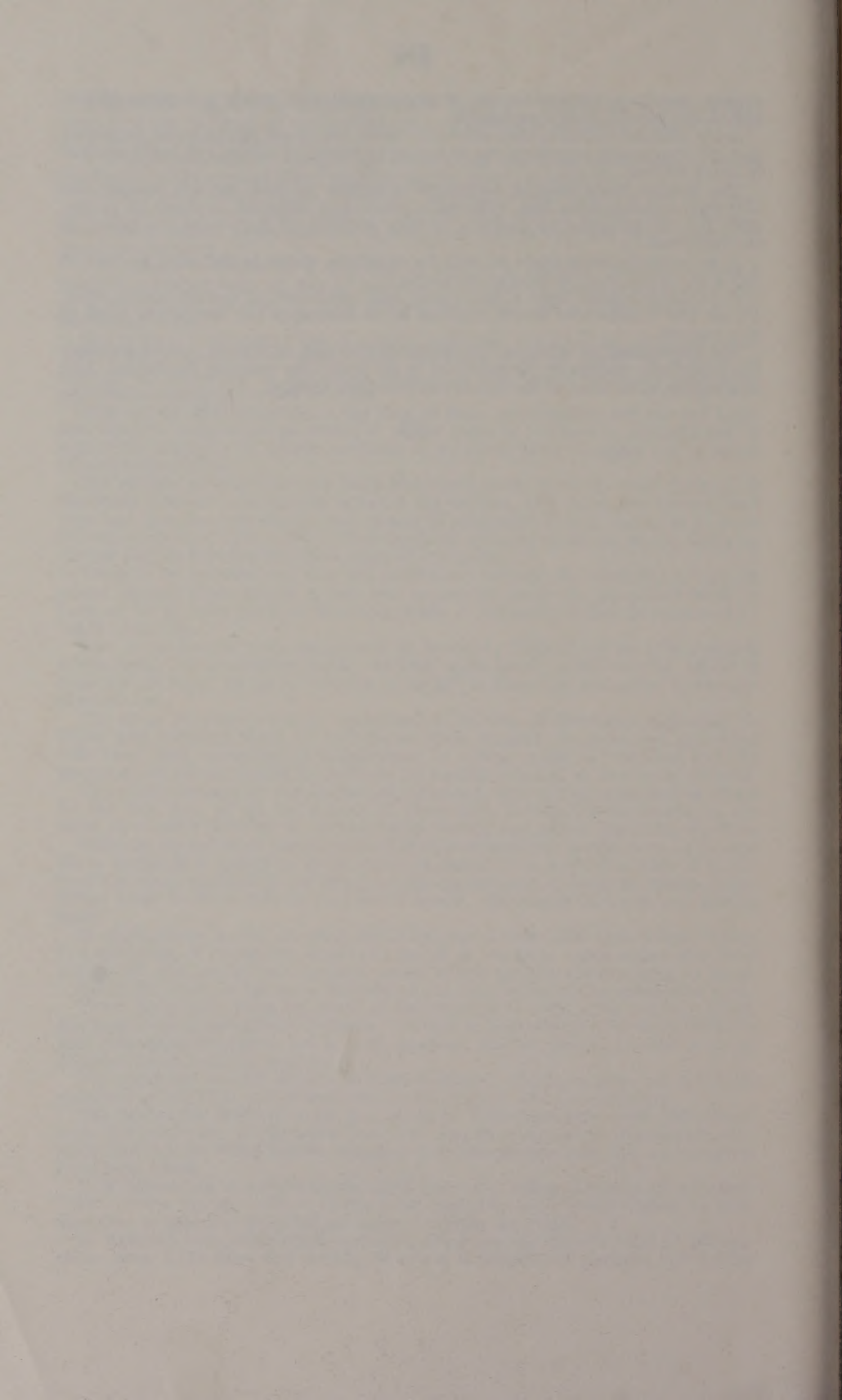
The British force here is considered adequate to hold the line against the terrorist organizations and sufficiently large and effective to make it impossible for the situation to escalate to open warfare, if that were the intent of the terrorists.

It is not sufficiently large to gain its objective, which is the same as that of any army in any war: to destroy the enemy.

It is thinly spread over a large area and compelled to operate under what almost any commander would consider to be necessary but restrictive rules of engagement.

The government in Whitehall understands this and, at present, settles for what the army can reasonably be expected to do under the existing conditions. And to a degree, so do most of the citizens of Northern Ireland.





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